

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



JOINT APPENDIX

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

\_\_\_\_\_  
No. 22,181  
\_\_\_\_\_

592

INTERNATIONAL UNION OF ELECTRICAL, RADIO  
AND MACHINE WORKERS, AFL-CIO, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent,

and

LIBERTY COACH COMPANY, INC., Intervenor.

\_\_\_\_\_  
No. 22,394  
\_\_\_\_\_

LIBERTY COACH COMPANY, INC., Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent,

and

INTERNATIONAL UNION OF ELECTRICAL, RADIO  
AND MACHINE WORKERS, AFL-CIO, Intervenor.

ON PETITION TO REVIEW AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

United States Court of Appeals  
for the District of Columbia Circuit

FILED APR 7 1969

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Washington, D.C. - TELETYPE - 202 393-0825  
Clerk *Paulson*



(i)

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The following materials constitute a portion of the documents which had been submitted to the Regional Director in the representation proceeding and which were ordered lodged with the Clerk of the Court by the Court's Order of January 16, 1969, upon consideration of Liberty Coach Company's Motion to Supplement the Record. As of the time of the printing of this Appendix, these materials had not been made part of the record herein.

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## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES:

In the Matter of: International Union of  
Electrical, Radio and  
Machine Workers, AFL-CIO

Case No.: 25-CA-2921

9.19.67	Original charge filed.
10.24.67	Original Complaint and Notice of Hearing, with form NLRB-4668 attached, dated.
10.31.67	Library Coach Company, <sup>1/</sup> Inc.'s answer to complaint, received
12. 4.67	General Counsel's Notice of Intent to Amend Complaint, dated.
12. 8.67	General Counsel's Further Notice of Intent to Amend Complaint, dated.
12. 8.67	Liberty's Amended Answer to Complaint and Notice of Hearing, received.
12. 8.67	Liberty's motion to strike new matter raised in the complaint not a part of the charge as filed and not related to said charge as filed, received.
12. 8.67	Liberty's motion to require production of entire record including but not limited to the investigation in the Representation Case at the Hearing, received.
12. 8.67	Regional Director's Order referring motions to Trial Examiner's, dated.
12.12.67	General Counsel's telegram opposing Liberty's motions, dated.
12.13.67	Liberty's motion for bill of particulars as to new matter raised in the complaint beyond that charged and as to any additional matter complained in any amended complaint allowed, received.
12.13.67	Regional Director's Order referring motion to Trial Examiner, dated.
12.12.67	Trial Examiner's teletype advising counsel that ruling where referred to and will be ruled on by the Trial Examiner conducting the hearing in this matter, dated.
12. 6.67	Stipulation of the parties, received.

1/ Respondent before the Board hereinafter called Liberty.

12.14.67           Hearing opened.

12.15.67           Hearing closed.

1.23.68           General Counsel's motion to correct record, dated.  
(Granted, except for the correction to page 145, line 1  
see Trial Examiner's Decision page 1, footnote 1)

2. 2.68           Liberty's motion to find that the transcript is  
patently erroneous and unintelligible and unreliable  
and to make the following changes in said transcript,  
received. (Granted, see Trial Examiner's Decision  
page 1, footnote 1)

2. 12.68           Trial Examiner's Decision, issued.

3.11.68           General Counsel's exceptions to Trial Examiner's  
Decision, received.

3.11.68           Petitioner's <sup>2/</sup>request for oral argument, dated. IDenied,  
see D & O page 1, footnote 1)

3.11.68           Petitioner's exceptions to Trial Examiner's Decision,  
received.

3.11.68           Liberty's exceptions to Trial Examiner's Decision,  
received.

3.21.68           Liberty's reply brief, received.

8. 1.68           Decision and Order of the National Labor Relations Board,  
dated.

1/ Petitioner herein was Charging Party before the Board.

[Caption Omitted in Printing]

COMPLAINT AND NOTICE OF HEARING

It having been charged by International Union of Electrical, Radio and Machine Workers, AFL-CIO herein called the Union that Liberty Coach Company, Inc. herein called Respondent has engaged in, and is engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 519, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for the Twenty-fifth Region, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations - Series 8, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The original charge was filed by the Union on September 19, 1967, and served on Respondent by registered mail on or about September 19, 1967.

2. (a) The Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Indiana. It is engaged in the manufacture of mobile homes.

(b) Respondent, during the past twelve months, which period is representative of all times material herein manufactured, sold, and shipped from its Syracuse, Indiana plant finished products valued in excess of \$50,000 to points outside Indiana.

(c) Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

4. At all times material herein, the following-named persons occupied positions set opposite their respective names, and have been and are now agents of the Respondent at its Syracuse, Indiana establishment, acting on its behalf, and are supervisors within the meaning of Section 2(11) of the Act:

Charles Warren - Superintendent

Harold Weaver - Vice President in Charge of Manufacturing

Charles Hoover - foreman

5. Since on or about August 15, 1967, Respondent has interfered with restrained and coerced and is interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act by the acts and conduct set forth in paragraphs 6 and 7.

6. (a) On or about September 5, 1967 did discharge Willis Newby an employee of said Respondent .

(b) Since the date of discharge referred to above in paragraph 6(a), Respondent has failed and refused, and continues to fail and refuse, to reinstate said employee to his former or substantially equivalent position of employment.

(c) Respondent did discharge and failed and refused, and continues to fail and refuse, to reinstate the employee referred to and named above in paragraph 6a, and 6(b), because said employee joined and assisted the Union and engaged in other union activity and concerted activities for the purpose of collective bargaining and mutual aid and protection.

(d) Since on or about September 1, 1966, Respondent instituted and at all times since has maintained a policy of soliciting applications from and hiring non-union employees and employees opposed to joining and becoming members of a union and being represented by a labor organization.

7. (a) All production and maintenance employees of the Employer at its Syracuse, Indiana establishment but excluding all office clerical employee, all mobile home haulaway truckdrivers, guards, and all professional employees and supervisors as defined in the Act constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

(b) On or about October 28, 1966, a majority of the employees of Respondent in the unit described above in paragraph 7(a), by a secret ballot election conducted under the supervision of the Regional Director for Region Twenty-five of the National Labor Relations Board, designated and selected the Union as their representative for the purposes of collective bargaining with Respondent, and on or about August 15, 1967, said the Board certified the Union as the exclusive collective bargaining representative of the employees in said unit.

(c) At all times since August 15, 1967, and continuing to date, the Union has been the representative for the purposes of collective bargaining of the employees in the unit described above in paragraph 7(a), and, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of all the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(d) Commencing on or about August 17, 1967, and continuing to date, the Union has requested, and is requesting, Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive collective bargaining representative of all the employees of Respondent in the unit described above in paragraph 7(a).

(e) Commencing on or about August 17, 1967, and at all times thereafter, Respondent did refuse, and continues to refuse, to bargain collectively with the Union as the exclusive collective bargaining representative of all the employees in the unit described above in paragraph 7(a), in that Respondent has refused to recognize and bargain with the Union notwithstanding that the Union was at the time the duly certified exclusive bargaining representative of the employees, as described in paragraph 7a,b,c,and (d).

8. By the acts described above in paragraphs 5 through 7, and by each of said acts, Respondent did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

9. By the acts described above in paragraph 6, and by each of said acts, Respondent did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

10. By the acts described above in paragraphs 7, and by each of said acts, Respondent did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

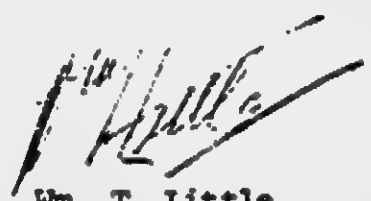
11. The acts of Respondent described in paragraphs 5 through 10 above, occurring in connection with the operations of Respondent described in paragraph 2 above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

12. The acts of Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8(a)1, 8(a) 3 and 8(a)5 and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 14th day of December, 1967, at 10:00 a.m. (EST) at County Courthouse Jury Room, Main Street, Goshen, Indiana, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. \*

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to said Complaint within ten (10) days from the service thereof and that unless it does so, all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

DATED AT Indianapolis, Indiana, this 24th day of October, 1967.



Wm. T. Little  
Regional Director  
National Labor Relations Board  
Region Twenty-five  
Sixth Floor, ISTA Center  
150 West Market Street  
Indianapolis, Indiana 46204

\* / Form NLRB-4668, Statement of Standard Procedure in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, as amended.

December 4, 1967

Mr. James Shea, Attorney  
Shea, Shea & Heath  
1100 N. Woodward Avenue, Suite 100  
Birmingham, Michigan 48011

RE: LIBERTY COACH COMPANY, INC.  
CASE NO. 25-CA-2721

NOTICE OF INTENT TO AMEND COMPLAINT

Dear Sir:

Please be advised that at the hearing herein I intend to move the Complaint be amended as follows:

I. Strike the numeral 5 representing the number for paragraph numbered 5 and insert in place thereof "5(a)."

II. Add the following new subparagraph to paragraph 5.

"(b) Respondent, by its following-named supervisor and agent, on or about the dates set opposite his name at its Syracuse, Indiana establishment interrogated its employees concerning their own and other employees' union membership; activities and desires:

Charles Warren

- on an unspecified date in the  
latter part of October, 1967;  
November 30, 1967."

III. Add the following new subparagraph to paragraph 5.

"(c) Respondent, by its following named supervisor and agent on or about the dates set opposite his name at its Syracuse, Indiana establishment threatened its employees with unspecified reprisals if they became or remained members of the union or gave any assistance or support to it.

Charles Warren

- on an unspecified date in the  
latter part of October, 1967;  
November 30, 1967."

Sincerely,

Albert N. Stieglitz,  
Counsel for the General Counsel



# NATIONAL LABOR RELATIONS BOARD

REGION 25

ISTA Center, 150 West Market Street

Indianapolis, Indiana 46204

Telephone 633-8921

December 8, 1967

Mr. James Shea, Attorney  
Shea, Shea & Heath  
1100 N. Woodward Avenue, Suite 100  
Birmingham, Michigan 48011

RE: LIBERTY COACH COMPANY, INC.  
CASE NO. 25-CA-2921

## FURTHER NOTICE OF INTENT TO AMEND COMPLAINT

Dear Sir:

Please be advised that at the hearing herein I intend to move the Complaint be amended as follows:

Add the following new subparagraph to paragraph 5.

"(d) Respondent, by its following-named supervisor and agent, on or about the date set opposite his name at its Syracuse, Indiana establishment interrogated its employees concerning their own and other employees' union membership, activities and desires:

Harold Weaver

on or about mid-September, 1967

Sincerely,

Albert N. Stieglitz,  
Counsel for the General Counsel

cc: Liberty Coach Company, Inc., P. O. Box 608, Syracuse, Indiana

cc: International Union of Electrical, Radio & Machine Workers, AFL-CIO  
CLC- Local 800, Attn: Ted Nolan, Int'l. Repr., 702 West Jefferson,  
Fort Wayne, Indiana 46804

cc: General Counsel, Attn: Mr. Irving Abramson, IUE-AFL-CIO, 1126 16th  
Street, Washington, D. C.

cc: Division of Trial Examiners, National Labor Relations Board,  
Washington, D. C. 20570

[Caption Omitted in Printing]

AMENDED ANSWER TO COMPLAINT AND NOTICE OF HEARING

Now comes the Respondent, by his attorney, James F. Shea, and for an amended answer to the Complaint herein admits, denies and alleges as follows:

1. In answer to paragraph 1 of the Complaint, for lack of sufficient information and upon belief, denies the time of the filing of the charge and alleges said charge was served on Respondent's attorney of record on October 27, 1967, but without the attached letter and further alleges said charge has never been amended. Respondent further alleges said charge has never been amended and the Complaint contains additional matter completely different from the original charge and said additional matter in the Complaint is so vague and general that it neither permits of a proper answer or defense.

2. (a) In answer to paragraph 2(a) of the Complaint, admits Respondent is an Indiana corporation engaged in the manufacture of mobile homes.

(b) In answer to paragraph 2(b) of the Complaint, admits Respondent has, during the past twelve months, which period is representative of all times material herein since December 31, 1960, manufactured, sold and shipped from its Syracuse, Indiana plant finished products valued in excess of \$50,000 to points outside Indiana.

(c) In answer to paragraph 2(c) of the Complaint, admits

the allegations as to Section 2(6) of the Act but denies the allegations as to Section 2(7) of the Act.

3. In answer to paragraph 3 of the Complaint, denies the union is, with reference to Respondent's employees and Respondent, a labor organization within the meaning of Section 2(5) of the Act.

4. In answer to paragraph 4 of the Complaint, admits to the allegations contained therein except denies that Charles Hoover is a supervisor within the meaning of Section 2(11) of the Act.

5. In answer to paragraph 5 of the Complaint, denies that Respondent has interfered with or restrained or coerced or is interfering with, restraining or coercing its employees in the exercise of rights guaranteed under Section 7 of the Act or by the acts and conduct set forth in paragraphs 6 and 7.

6. (a) In answer to paragraph 6(a) of the Complaint, admits the allegations contained in paragraph 6(a) of the Complaint but denies any inference of wrongful discharge of Willis Newby.

(b) In answer to paragraph 6(b) of the Complaint, admits the allegations contained therein but denies any inference of wrongful failure or wrongful refusal to reinstate Willis Newby or any obligation to reinstate Willis Newby.

(c) In answer to paragraph 6(c) of the Complaint, denies each and every allegation contained therein and alleges that the sole basis for discharge of Willis Newby is contained in the affidavit filed with the

National Labor Relations Board during the investigation of the Regional Director.

(d) In answer to paragraph 6(d) of the Complaint, denies each and every allegation contained therein and specifically denies that it has solicited applications from and hired only non-union employees and employees opposed to joining and becoming members of a union or being represented by a labor organization and alleges Respondent has never been charged with or informed of charges of such a nature against Respondent and further alleges that the statute of limitations would apply to any such charge and denies jurisdiction for such a charge.

7. (a) In answer to paragraph 7(a) of the Complaint, admits the allegations contained therein to the extent that such a unit would constitute an appropriate unit under the Act but denies any inference contained therein that such a unit was validly and properly certified and denies any inference that such a unit would include any truck mechanics or garage operators not located on the premises of its Syracuse, Indiana establishment or any inference that truck mechanics and garage operators would in any event be part of any appropriate collective bargaining unit.

(b) In answer to paragraph 7(b) of the Complaint, denies the allegations contained therein and specifically denies that a majority of the employees of Respondent described in paragraph 7(a) of the Complaint by secret ballot in a valid election designated or elected the union as their representative for the purpose of collective bargaining with Respondent and specifically denies that the Board validly and properly certified the

union as the exclusive collective bargaining representative as alleged in said paragraph 7(b) of the Complaint, and for further answer to paragraph 7(b) of the Complaint, incorporates herein the entire record including the investigation, objections, exceptions, challenges, correspondence of the parties, affidavits, briefs and pleadings, recommendations, opinions and decisions in the representation case, Case No. 25-RC-3332, and for further answer to paragraph 7(b) of the Complaint alleges that Respondent was arbitrarily and capriciously denied a hearing in the representation case and that the record in said case demonstrates a denial of due process to the Respondent and a prejudice on the part of the investigating agent of the National Labor Relations Board that operated to produce a biased investigation in addition to the failure of granting a hearing to Respondent on the substantial issues of fact set forth in Respondent's challenges, objections, exceptions and during the course of the investigation in the representation case. The record of said investigation is incorporated herein by this reference.

(c) In answer to paragraph 7(c) of the Complaint, denies that the union has at any time been the representative for purposes of collective bargaining of any of the employees of Respondent and denies that it is now the exclusive representative of said employees under Section 9(a) of the Act for any purpose and for further answer to paragraph 7(c) of the Complaint, incorporates herein the entire record including the investigation, objections, exceptions, challenges, correspondence of the parties, affidavits, briefs and pleadings, recommendations, opinions and

decisions in the representation case, Case No. 25-RC-3332, and for further answer to paragraph 7(c) of the Complaint alleges that Respondent was arbitrarily and capriciously denied a hearing in the representation case and that the record in said case demonstrates a denial of due process to the Respondent and a prejudice on the part of the investigating agent of the National Labor Relations Board that operated to produce a biased investigation in addition to the failure of granting a hearing to Respondent on the substantial issues of fact set forth in Respondent's challenges, objections, exceptions and during the course of the investigation in the representation case.

(d) In answer to paragraph 7(d) of the Complaint, admits that the union has requested Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, but denies that the union has any right to represent Respondent's employees for any purpose and denies that it is the exclusive collective bargaining representative of any employees of Respondent.

(e) In answer to paragraph 7(e) of the Complaint, admits that Respondent has refused and continues to refuse to bargain with the union or to recognize the union but alleges that the union was not duly certified to represent any employees of Respondent and is not the exclusive bargaining representative of the Respondent's employees and denies specifically that the alleged certification of the union was valid and proper and according to law.

8. In answer to paragraph 8 of the complaint, denies the

allegations contained therein and specifically denies that Respondent has engaged in or is engaging in unfair labor practices within the meaning of Section 8(a)(1) and Sections 2(6) and 2(7) of the Act.

9. In answer to paragraph 9 of the Complaint, denies Respondent engaged in or is engaging in any acts that were unfair labor practices and denies each and every allegation contained in said paragraph.

10. In answer to paragraph 10 of the Complaint, denies each and every allegation contained therein and specifically denies that Respondent engaged in or is engaging in any unfair labor practices within the meaning of the Act.

11. In answer to paragraph 11 of the Complaint, denies the allegations contained therein and specifically denies any of the acts described therein and specifically denies Respondent has engaged in activities tending to lead to labor disputes burdening and obstructing commerce or its free flow.

12. In answer to paragraph 12 of the Complaint, specifically denies each and every allegation contained therein and each and every alleged act and unfair labor practice alleged therein.

13. In further answer to the Complaint filed herein alleges that Respondent was not during the investigation of the original charge filed herein or at any other time informed other than by way of the Complaint of the additional matters set forth in the Complaint, which additional matters are not related to the charge originally proposed and that at no time during the investigation was any question propounded to

Respondent concerning said additional matter by the investigator or the attorney for the National Labor Relations Board and alleges that Respondent does not possess sufficient facts concerning the nature or details or particulars thereof that would allow preparation of a defense within the ambit of affording Respondent due process of law and alleges further that the attorney for the National Labor Relations Board just now has notified the Respondent of his intent to raise additional issues at the hearing which again would operate to deny due process of law to the Respondent by affording no time to Respondent to prepare its defense and further alleges that the additional matter contained in the Complaint and the proposed additional matter, by way of untimely amendment, is an effort by the same person who investigated the representation case and now is acting as attorney in this case to deny Respondent due process of law and was done in the representation case.

WHEREFORE, Respondent prays that it be determined that Respondent has not engaged in any unfair labor practices and that the Complaint be dismissed in its entirety.

Respectfully submitted,

LIBERTY COACH COMPANY, INC.

Dated: December 5, 1967

  
James F. Shea, Attorney

[Caption Omitted in Printing]

MOTION TO REQUIRE PRODUCTION OF ENTIRE  
RECORD INCLUDING BUT NOT LIMITED TO THE  
INVESTIGATION IN THE REPRESENTATION CASE AT THE HEARING

Now comes the Respondent, by his attorney, James F. Shea, and moves that the Regional Director and the attorney for the Regional Director and the National Labor Relations Board and its agents and appropriate employees be required to produce the entire record of the representation case, Case No. 25-RC-3332, at the hearing in this case and as grounds therefor states as follows:

1. That the record in said case demonstrates that substantial issues of material fact requiring a hearing existed in the representation case and that said hearing was denied and the record in said case further demonstrates that as to the objections, challenges and exceptions, all of the evidence produced demonstrated the correctness of Respondent's position on challenges, objections and exceptions.



James F. Shea, Attorney for  
Liberty Coach Company, Inc.

[Jurāt Omitted in Printing]

1

BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Twenty-Fifth Region

-----	x	
	:	
LIBERTY COACH COMPANY, INC.,	:	
	:	
Respondent,	:	
	:	
-vs-	:	Case No. 25-CA-2921
	:	
INTERNATIONAL UNION OF	:	
ELECTRICAL RADIO, AND	:	
MACHINE WORKERS, AFL-CIO,	:	
	:	
Charging Party.	:	
	:	
-----	x	

Elkhart County Court House,  
Goshen, Indiana,  
Thursday, December 14, 1967.

The above-entitled matter, pursuant to notice, came  
on for hearing at 10:00 o'clock a. m.

BEFORE:

MELBIN POLLACK, Trial Examiner.

APPEARANCES:

MR. ALBERT N. STIEGLITZ and  
MR. ARTHUR G. LANKER, 150 West Market Street, ISTA  
Center, Indianapolis, Indiana, 46204,  
appearing on behalf of General Counsel.

MR. JAMES F. SHEA and  
MR. JOHN C. SHEA; Suite 100, 1100 North Woodward  
Avenue, Birmingham, Michigan, 48011,  
appearing on behalf of the Respondent.

MR. TED NOLAN: International representative, 702 West  
Jefferson Street, Fort Wayne, Indiana,  
appearing on behalf of the Charging  
Party.

P R O C E E D I N G S

TRIAL EXAMINER POLLACK: The hearing will be in order.

This is a formal hearing before The National Labor Relations Board in the matter of Liberty Coach Company Incorporated and International Union of Electrical Radio, and Machine Workers, AFL-CIO, case number 25-CA-2921. The Trial Examiner conducting this hearing is Melbin Pollack.

Will Counsel and other representatives for the party please state their appearances for the record? For the General Counsel?

MR. STIEGLITZ: Robert N. Stieglitz and Arthur G. Lanker, Counsel for General Counsel, National Labor Relations Board, Twenty-Fifth Region, ISTA Center, 150 West Market Street, Indianapolis, Indiana.

TRIAL EXAMINER: Well, for the Charging Party?

MR. NOLAN: Ted Nolan, International Representative, IUE, AFL-CIO, 702 West Jefferson Street, Fort Wayne, Indiana.

TRIAL EXAMINER: For the Respondent Company?

MR. SHEA: James F. Shea, 1100 North Woodward, Birmingham, Michigan. John C. Shea?

MR. SHEA: John C. Shea, 1100 North Woodward, Birmingham, Michigan.

MR. NOLAN: I would like to add further Charging Party the General Counsel of the Union, Irving Abramson, 1126 16th Street, Washington, D.C.

4 TRIAL EXAMINER: General Counsel's Exhibit 1 is received.

(Thereupon, General Counsel's Exhibit No. 1A through 1Q for identification, was received in evidence.)

\* \* \*

6 TRIAL EXAMINER: General Counsel's Exhibits 2A through 2D is received.

(Thereupon, General Counsel's Exhibits Nos. 2A through 2D for identification, were received in evidence.)

\* \* \*

TRIAL EXAMINER: General Counsel's Exhibit 2E is received.

(Thereupon, General Counsel's Exhibit No. 2E for identification, was received in evidence.)

MR. STIEGLITZ: And General Counsel's Exhibit 2F, Stipulation of Parties.

TRIAL EXAMINER: General Counsel's Exhibit 2F is received.

7 (Thereupon, General Counsel's Exhibit No. 2F for identification, was received in evidence.)

\* \* \*

MR. STIEGLITZ: Yes. Number 1, General Counsel wishes to withdraw the allegation pertaining to Paragraph 6(d) of the Complaint.

\* \* \*

TRIAL EXAMINER: It is granted.

\* \* \*

MR. STIEGLITZ: Thank you Your Honor.

Number 2, General Counsel wishes to amend Complaint in the following respect: as set forth in the notice of an intent to amend the Complaint which is General Counsel's Exhibit Number 1H and 1J --

TRIAL EXAMINER: Well, I have a motion before me from the Respondent's Attorney to strike these matters and also I think that is all that becomes pertinent at the present time. I'm going to grant the amendment, deny Respondent's motion or motions, but I will give Respondent, if necessary, additional time to prepare its case should that turn out to be necessary.

\* \* \*

MR. SHEA: Your Honor, we have an automatic exception.

TRIAL EXAMINER: You have an automatic exception to my rulings. I am denying, in other words, your motions to strike any matter raised in the Complaint, not a part of the charges file and not related to such charges filed and I am also denying your motion for bill of particulars as to these new complaint matters and I have before me, I believe, one other motion to require production of the entire record but not limited to the investigation in the representation case at the hearing. Under Section 9D of the National Labor Relations Act the record in the representation case underlying the Section 8A5 the allegation in the Complaint will automatically be certified to a reviewing Court once the Board

issues an order. Therefor, I consider the motion unnecessary and denied.

\* \* \*

10 TRIAL EXAMINER: On the record.

In an off the record discussion the parties gave me to understand that we have come to the following understanding: They are willing to stipulate that the charging union is a labor organization within the meaning of Section 2(5) of the Act, that Karl Hoover is a supervisor within the meaning of Section 2(11) in the Act, and that Ted Auer for some years up to August 1, 1967, was the plant superintendent and a supervisor within the meaning of Section 2(11) of the Act.

MR. STIEGLITZ: That was from 1957.

MR. SHEA: If the court please we accept the stipulation on the union, except we do maintain our denial of any status of representation.

\* \* \*

11 We will stipulate for  
the purpose of this proceeding, that Mr. Hoover had supervisory  
12 capacity and that Mr. Hoover was over Mr. Newby and that is what  
we will stipulate.

TRIAL EXAMINER: All right. Are those stipulations satisfactory to the General Counsel?

MR. LANKER: Yes, they are Counsel.

TRIAL EXAMINER: So stipulated.

\* \* \*

EDWARD HUSSEY,

was called as a witness by and on behalf of General Counsel, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

\* \* \*

Q. (By Mr. Stieglitz) Mr. Hussey, what is your present position with Liberty Coach?

A. President.

Q. And how long have you been president?

13 A. A little over 7 years.

Q. Now, do you presently have a plant in Syracuse, Indiana; is that correct?

A. Yes.

Q. And you are engaged in the manufacture of coaches?

A. Yes.

Q. And you also have plants in Pennsylvania?

A. Yes, a plant in Pennsylvania.

Q. And where is that located?

A. It's at Lancaster, Pennsylvania.

Q. You have a plant in Georgia presently?

A. Yes.

Q. And where is that located?

A. Thomasville.

\* \* \*

14 Q. You have a vice-president named Harold Weaver?

A. Yes.

Q. What is his duties?

A. Charge of production.

Q. I see. Is he chief of production.

A. Production and designing service.

Q. And who does he report to?

15 A. To me.

Q. And you presently have in your employ an E. C. Bechtold?

A. E. W., I think it is.

Q. And what is his position with the company?

A. He is treasurer of the company.

Q. And underneath, as far as production is concerned, Mr. Weaver is a person directly under him as far as his supervisory under Charles Warren?

A. Yes, Charles Warren is my superintendent.  
he

Q. And how long has he been plant superintendent?

A. Since the 1st of August.

Q. 1967?

A. '67.

Q. And prior to Mr. Warren who was the plant superintendent?

A. Ted Auer.

Q. And he had some other duties?

A. Yes.

Q. And as far as going down briefly your supervisory structure, below Mr. Warren what is the -- strike that. The next level of the supervisory is the foremen; is that correct?

A. Yes.

Q. And is Karl Hoover presently a foreman?

A. Yes.

Q. And how long has he been foreman?

A. A little less than a year, I guess.

16 Q. And could you tell us what area Karl Hoover is foreman of?

A. He has the metal section of the main line.

Q. What specific operation would that include?

A. Oh, the metal sheeting, metal roof, windows, basic things.

Q. You say metal roof, is that also called top roof crew?

A. We don't have any name such as that particular one.

Q. Now, these men that put on metal roofs, they are under Mr. Hoover; is that correct?

A. Yes.

\* \* \*

17 Q. Mr. Hussey, I'm handing you what has been marked as General Counsel's Number 3 and asking you if this was sent to the employees under your direction?

\* \* \*

18 A. What was the question again?

Q. Is this a letter that was prepared by yourself and distributed to employees?

A. Yes.

Q. And distributed on the date indicated, August 25, 1967?

A. Yes.

Q. And was this mailed to employees or handed to employees?

A. This was mailed to employees.

Q. And is that your signature that appears on the bottom?

A. Yes.

MR. STIEGLITZ: At this time General Counsel makes the introduction of General Counsel's Exhibit Number 3.

MR. SHEA: Show no objections.

TRIAL EXAMINER: General Counsel's Exhibit Number 3 is received.

(Thereupon, General Counsel's Exhibit No. 3 for identification was received in evidence.)

MR. STIEGLITZ: Would the reporter please mark this as General Counsel's Exhibit Number 4?

(Thereupon, the document referred to was marked as General Counsel's Exhibit No. 4 for identification.)

Q. I hand you what has been marked as General Counsel's Exhibit Number 4 and ask you if that document was prepared by you and signed by yourself?

19 A. Yes.

Q. And was that letter distributed to the employees at the date indicated, October 9, 1967?

A. Yes.

Q. Under your direction?

A. Yes.

MR. STIEGLITZ: At this time I move for the introduction of General Counsel's Exhibit Number 4.

\* \* \*

(Thereupon, General Counsel's Exhibit No. 4, for identification, was received in evidence.)

Q. Now going back, Mr. Hussey, to your assembly line operation your basic assembly line operation is based in this particular building; is that correct?

A. No. There are three buildings.

20 Q. What buildings are they?

A. Cabinet Shop building, our floor building, and our main production building and the remainder of the line. It is a continuous line, really one line under three roofs.

\* \* \*

Q. And is there a way we can define the area where the roof crew or the metal top crew as you call it works? Is there any way we can  
21 define the areas I ask questions/we know what we are talking about?

A. Well, it is about the middle of the building to which the office is attached. It is a little bit beyond the middle.

\* \* \*

Q. Do you have any time clocks or time card racks in that building, in the building where the office is attached?

A. Yes.

Q. And how many time clocks do you have?

A. In that building there are two.

Q. And are there a rack for each time clock?

A. Yes.

Q. And on each time clock is an "out" rack and an "in" rack?

A. Yes.

Q. And if an employee does not punch in where would his card be, in the "out" rack?

A. In the "out" rack, yes.

Q. Now, when is your busy season that I can use the word busy; do you understand my question?

A. The spring, summer, and early fall.

\* \* \*

22 Q. Now, as far as the roof crew is concerned isn't it true that during this period called the busy season that they have six men assigned to that metal top crew?

A. Yes.

\* \* \*

Q. And the roof crew is under the direction of Mr. Karl Hoover, the foreman that we speak of?

A. Yes.

\* \* \*

24 Q. (By Mr. Stieglitz) You are familiar with an employee by the name of Newby; is that correct?

A. Yes.

25 Q. And Mr. Newby worked this crew, roof top crew?

A. Yes.

Q. How long did he work on the crew?

A. Approximately a year and a half.

Q. Do you recall when he was hired in?

A. Early '66.

Q. And has he been discharged by your company?

A. Yes, I discharged him.

Q. And what date was that?

A. The Tuesday after Labor Day.

Q. That would be September 5, 1967?

A. Yes, September 5.

Q. And what was the reason for the discharge?

A. Mr. Newby was discharged because he failed to report in to work on the 5th of September, he failed to report in and he failed to call us as to his reasons for not coming in until late in the afternoon.

\* \* \*

26 A. Well, we had to have a fire on the preceding Wednesday afternoon which destroyed our cabinet shop and forced us to close our entire plant until Tuesday morning. We then went to work. We cleaned up the fire. A great <sup>many</sup> people worked that week-end, worked night and day, I personally worked night and day and a great many people in our organization in the plant worked night and day to get

that plant back in to operation. When I dismissed the men on Wednesday afternoon after the fire I specifically stated to them that they would be back in there on Tuesday morning. All the entire rest of the 200 people reported in there, either reported in to work or informed us, with the exception of two people. And we hadn't heard from them and I went out there at about 10:30 in the morning and found that they were the only two that we hadn't heard from and I pulled their cards. I had their cards pulled and determined because their failure indicated their lack of interest in our company when we tried to get this plant back into production after this fire. We all are extremely tired and here we have two men who had absolutely no interest in the company failing to report to work and I felt that that was solid grounds for dismissal. I told them previously I told management and I talked to them about it and made very clear that they were to report in here, report when they weren't coming in to work, call early in the morning to the plant superintendent or send word in to there that they couldn't make it in that day. Further,

27 our plant superintendent informed every man when he hired them that this company policy that they were to report in when they couldn't get in there and they couldn't get in to work.

\* \* \*

Q. (By Mr. Stieglitz) I hand you what has been marked as General Counsel's Exhibit Number 5 which has been subpoenaed from the record and ask you if you have seen that letter?

A. Yes, I have.

Q. You received it on or about September 26?

A. Yes.

MR. STIEGLITZ: At this time I move for the introduction of General Counsel's Exhibit Number 5?

28 TRIAL EXAMINER: General Counsel's Exhibit 5 is received.

Off the record.

(Discussion off the record.)

TRIAL EXAMINER: General Counsel's 5, a letter dated September 26, 1966, and a delivery acknowledgement attached thereto are received into evidence.

(Thereupon, General Counsel's Exhibit No. 5 for identification, was received in evidence.)

Q. Now, directing your attention to this past August you received handbills -- you have seen handbills from the union; is that correct?

A. Yes.

Q. Let me show you this document that has been marked as General Counsel's Exhibit 6 and you have seen that particular handbill have you not?

A. I can't be sure I've seen this one. I've seen some but I don't particularly recall this one.

Q. Well, let me show you again here your letter which is General Counsel's Exhibit Number 3, dated August 25, 1967, right?

And wasn't that in response to a union handbill, the one I just handed you, General Counsel's Exhibit 6 announcing certification? Well, have you seen that sir?

A. I've seen this letter.

Q. The letter you have in your hand, you have seen that, of course?

A. I have seen this letter.

29 Q. Did you not issue that letter and acknowledge the handbill I just showed you?

A. I cannot be sure.

Q. You showed your response to a certain handbill?

A. Yes, well there were handbills handed out and I issued this letter.

Q. You issued it in August; is that right?

A. It was issued August 25, 1967.

Q. And there was a handbill issued in August of 1967; is that correct?

A. I presume there was I don't remember the date.

Q. I direct your attention to the first sentence of your letter, "This letter is to assure you and your family that Liberty does not recognize and will not bargain with the labor organization presently making pass outs to Liberty employees." Now, will you please tell us whether or not that letter was sent in response to the union handbill.

A. Yes, but I don't know whether it was to that specific one.

30 TRIAL EXAMINER: General Counsel's Exhibit 6 is received.

(Thereupon, General Counsel's Exhibit No. 6 for identification, was received in evidence.)

\* \* \*

Q. (By Mr. Stieglitz) Now, directing your attention to August 30, 1967, your company stated it had a fire that day is that correct?

A. The date was Wednesday preceding Labor Day.

Q. Will take official notice that was August 30, 1967. And you had personal control of your plant that day?

A. Yes.

Q. And the plant returned to production the following Tuesday; is that right, on September 5, 1967?

A. Yes. On Tuesday, yes, at 7:00 a.m.

Q. Now, at that time were you personally aware which employees were on which jobs?

A. Not all of them, no.

Q. Now, Willis Newby was fired on that day; is that correct?

A. Yes.

31 Q. And he was fired at 10:30 you say about?

A. Yes. I pulled his card about 10:30 in the morning.

Q. Well, did you pull his card yourself or did you have someone else do it?

A. I had someone else pull it.

Q. And what time was it pulled?

A. Shortly thereafter I presume.

Q. Shortly thereafter what time?

A. TRIAL EXAMINER: Shortly thereafter 10:30.

A. Yes.

Q. And was this done under your direction?

A. Yes. I ordered that the card be pulled, two cards be pulled.

Q. He was fired then; is that correct, discharged?

A. Yes.

\* \* \*

32 Q. Mr. Hussey, I hand you what has been marked as General Counsel's 7 and ask you if you have seen that letter?

A. Yes.

Q. And received it on that date?

A. Yes.

MR. STIEGLITZ: I move for the introduction of General Counsel's Exhibit Number 7.

TRIAL EXAMINER: General Counsel's Exhibit Number 7 is received.

(Thereupon, General Counsel's Exhibit No. 7 for identification, was received in evidence.)

\* \* \*

33 Q. I hand you this document that has been marked as General Counsel's Exhibit 8 and I will ask you if this is a warning notice

in the files?

A. Yes.

Q. And directing your attention to the middle of the page there are several boxes and there are x's in those boxes, does that indicate the type of action that the company has taken against an individual for conduct?

34 A. Well, it indicates what he has done that has warranted a warning for him.

Q. Just a preliminary measure and so forth are stated on the form; is that correct, and the person making the warning signed by that particular individual?

A. Yes.

Q. And I notice on the bottom it says warning number 1, 2, and final. This is the first warning they would circle the number 1; is that correct?

A. Not necessarily, no. These forms were used, some old forms, and we hadn't been in the practice of using them about this time. These warnings were given verbally and they picked up some old forms that we had there and they used these in a few instances for giving warnings at various periods.

Q. This is dated what date?

A. August 29.

Q. Of what year?

A. '67.

Q. So you used that form on August 29, 1967; is that correct?

A. Yes.

Q. For that particular employee?

A. Yes. I believe this is his first and final written warning.

Q. Do you know if that was his first and final warning?

A. Yes.

Q. Do you know if he was terminated because of that?

35 A. I believe he was at that time although it shows final so I am sure he was terminated about that time.

MR. STIEGLITZ: Would you mark this as General Counsel's Exhibit Number 9?

(Thereupon, the document referred to was marked as General Counsel's Exhibit No. 9 for identification.)

Q. I hand you what has been marked as General Counsel's Exhibit 9 which states, "Employees Termination Record" and ask you what employee is that for?

A. Ben Ray Yoder.

Q. And what is the date of that termination of the employee?

A. 9/16/67.

Q. September 16, 1967?

A. Yes.

Q. And what date was that issued?

A. September 23, '67.

Q. And what was the reason for this particular individual's,

stated in that form, why he was terminated?

A. Absenteeism. They didn't report in when absent.

Q. And that is signed by whom?

A. Charlie Warren.

\* \* \*

(Thereupon, General Counsel's Exhibit Nos. 8 and 9 for identification, were received in evidence.)

Q. I show you this employment termination record that shows that he was terminated on September 16; is that correct, was effective that date?

A. That is what the form shows all right.

Q. Now let me show you his warning notice again. And he was not, is that correct, terminated on August 29, 1967, when the notice was made out?

A. Well, it doesn't appear so from the forms, no.

\* \* \*

Q. Now when -- if a person were to receive a first warning would they circle the number 1; is this a fact?

A. Well, if it was the first warning when they started using those notices. Used the notices in the file at that point.

\* \* \*

WILLIS NEWBY,

was called as a witness by and on behalf of General Counsel, after

39 having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

\* \* \*

Q. (By Mr. Stieglitz) Mr. Newby, you are employed by Liberty Coach, Incorporated?

A. Yes.

Q. When was your employment terminated, do you recall the date?

A. The 5th.

Q. Do you recall the month?

A. September.

Q. Of this year?

A. Yes.

Q. Now,

TRIAL EXAMINER: When it comes to preliminary matters of this sort you can ask a long leading question.

Q. And did you start on February, 1966, during the month of February, 1966?

A. Yes.

Q. On what crew were you on?

A. Roof crew.

Q. And you kept a time card?

40 A. Yes, I did.

Q. Do you know what time clock of the other roof crew members

punched?

A. Same time card, same clock.

Q. And who was your foreman?

A. Karl Hoover.

Q. And do you recall about how long you were discharged he remained foreman?

A. Oh, I suppose about six months.

Q. Now, were you employed at the company at the time of the Labor Board election?

A. Yes, I was.

Q. On October 28, 1966?

A. Yes.

Q. Were you employed during the two months preceding after the month of October, September, and also August of 1966?

A. Yes, I was.

Q. And, Mr. Newby, did you ever sign a union card?

A. Yes, I did.

MR. STIEGLITZ: Mark this as General Counsel's Exhibit

12.

(Thereupon, the document referred to was marked as General Counsel's Exhibit No. 12 for identification.)

Q. I hand you what has been marked General Counsel's 12 and ask you if that is the IUE card that you signed?

41 A. Yes, it is.

Q. Did you sign it on that date?

A. Yes, I did.

Q. And where were you when you signed that card?

A. Just a kid's house where the first meetings was. We went out there that day and had it in a basement and I had a union man out there talk to me.

Q. And between that date and the date of the election did you attend anymore union meetings?

A. Yes, I did.

Q. Do you know about how many you attended?

A. Oh, about four or five.

Q. Did you attend any other meetings at this house where you signed the card?

A. Yes, I did.

Q. And about how many of those did you attend?

A. Oh, probably four or five.

Q. And were they for purposes of the union?

A. Yes, they was.

MR. STIEGLITZ: I move to introduce General Counsel's Exhibit Number 12 at this time.

TRIAL EXAMINER: General Counsel's Exhibit Number 12 is received.

(Thereupon, General Counsel's Exhibit No. 12 for identification, was received in evidence.)

42 Q. Now, during that time between the time you signed the card and the time of the election were you appointed to any union committees?

A. Yes, I was.

Q. What committee was that?

A. Organizing Committee.

Q. Now, again directing your attention to the period of time between the time you signed the card and the election itself, did you distribute any union handbills?

A. Yes, I did.

Q. Do you recall how many times you distributed handbills?

A. Probably about 7 or 8 times.

Q. And do you recall where you distributed the handbills?

A. Well, I distributed them there at the north gate factory after work time.

Q. And was this on each occasion?

A. Yes.

Q. And would you describe for us where the north gate is compared to the plant?

A. Well, it's out there between where they put bottoms on the trailers at that gate out there. Pass cards out there, handbills out there to the people coming out of the building, passed them out to them when they come out of the building where I worked.

Q. Who passed through that gate?

43 A. Guys was parked out there side of the building and stuff and they would come out that gate to get to their cars.

Q. Now, during that period you are speaking of at the time you signed cards, to the election, did you pass out any union cards?

A. Yes, I did.

Q. And where did you pass them out?

A. Passed them out and break time or lunch time to guys to sign.

Q. And where was this?

A. In the factory.

Q. Do you recall about how many cards you passed out?

A. Probably 12.

Q. And did you get any cards returned to you that was signed by employees?

A. Well, I got about five.

Q. Now, during this period of time also, did you wear any IUE buttons?

A. Yes, I did.

Q. And did you wear an IUE button in the plant?

A. Yes.

Q. Were there any instances when a member of supervision saw you wearing the IUE button?

A. Yes.

Q. Would you describe how this came about?

A. I was putting a roof up and he came around the backend of the trailer and glimpsed me have the button on.

44 Q. And can you state whether or not Mr. Auer was looking at you?

A. Yes, he looked right at me. It was right up there on my shirt and he was bound to see it because it was right on the front side.

Q. How large a button?

A. Oh, I suppose about 2 or 3 inches in diameter.

Q. Now, directing your attention to this past summer of July, 1967, did you attend any more union meetings?

A. Yes, I did.

Q. And were you appointed to any committees?

A. Yes, I was pointed on the organizing committee.

Q. Was there some other committee that was selected?

A. Yes. Yes, it was the union committee, is what it was.

Q. And do you recall when this time you were appointed occurred?

A. I don't recall right off hand just what the date was.

Q. Do you recall the month?

A. Oh, I think it was in, it was in May, I think.

Q. Well, let me ask you this, do you recall when the union received certification?

A. Yes, August 15, 1967.

45 Q. Were you on this union committee at that time of certification?

A. Yes, I was.

Q. I hand you what has been previously marked and introduced in evidence as General Counsel's Exhibit Number 6 and ask you after certification did you distribute any handbills to the plant?

A. Yes, about a week after.

Q. And I will ask you to look at that handbill and is that one of them you distributed?

A. Yes, I did.

Q. And do you recall where you distributed that handbill?

A. At the north gate out there. Distributed them out as guys come out of the shop.

Q. And do you recall -- strike that.

Could you state whether or not when you were distributing that handbill you saw any members of supervision?

A. Yes. I seen Karl Hoover.

Q. Would you state how this came about?

A. He went out that gate to go home.

Q. And what if anything happened after that?  
him

A. I went to hand/one and he wouldn't take it.

Q. And do you recall what time of day this was?

A. It was after 4:30 in the evening.

Q. And when did work get out every day?

46 A. 4:30.

Q. Now, you stated that you were discharged on September 5th; is that correct?

A. Yes.

Q. Did you go to the plant the next day and get that answer?

A. Yes, I did.

Q. Did you distribute any handbills that day?

A. Yes, I did.

Q. I hand you what we are going to mark as General Counsel's Exhibit Number 13 --

(Thereupon, the document referred to was marked as General Counsel's Exhibit No. 13 for identification.)

Q. -- and ask you if you distributed that handbill?

\* \* \*

A. I did.

Q. And do you recall what time of day you passed that out?

A. It must have been around 5:00 o'clock in the evening.

Q. And where did you distribute that one?

A. There at the north gate there and give it to several people.

Q. Now, directing your attention to that date did you see any members of supervision?

A. I saw Karl Hoover again.

47 Q. And what happened at that time, if anything?

A. I tried to hand one to him and he just drove on out.

Q. Do you know Mr. Hussey?

A. Yes.

Q. And did you see him that day when you were handing them out?

A. Him and two or three other guys in a car heading back to the office and I seen them go by.

MR. STIEGLITZ: I move for the introduction of General Counsel's Exhibit Number 13.

TRIAL EXAMINER: General Counsel's Exhibit Number 13 is received.

(Thereupon, General Counsel's Exhibit No. 13 for identification, was received in evidence.)

\* \* \*

Q. (By Mr. Stieglitz) Mr. Newby, you worked on the roof crew. Is that also called the metal top crew?

A. Yes.

Q. Now, how many men were working on that crew during the summer of '67 when you had a full crew?

48 A. Six men.

Q. And directing your attention between March and November -- strike that -- between the period of time of March to the last day you worked how many men did you have on your crew when you had everyone there?

A. Six.

Q. Now, going back to 1966, during March to say Thanksgiving time how many men did you have on your crew when everybody

reported in?

A. Six.

\* \* \*

Q. Directing your attention to this year of 1967, from March up until the time you last worked for the company were there any times when a man was absent on the roof crew?

A. Yes.

Q. Now, were there times when your roof crew worked with five?

A. Yes.

Q. During this period?

A. Uh-huh (indicating the affirmative.)

Q. And at these times were there six men on that crew?

A. Usually six men at all times. Sometimes there were men absent and we wouldn't get no replacement.

Q. Now, during this period time now March to the time you left the company were, state whether or not there were any instances  
49 where you had to work with a five man crew?

A. Yes.

Q. On those instances, did you receive a replacement each time to make six men?

A. No, we did not.

Q. Do you recall ever receiving a replacement when you were down to five men?

A. Not very often did we get a replacement.

Q. During this time when you were working with a normal six man crew were there any times when you had less than five men report that day?

A. No, I think we worked one time with four men.

Q. Can you recall when about that was?

A. I believe when the employees were all on vacation.

Q. Did you work with four men?

A. Yes, we worked with four men.

Q. Do you recall what time of year this was when the men were on vacation?

A. . July.

Q. Were there any times during the summer when you had less than four men?

A. Yes, one day two guys went home at noon and we only three men up there in the afternoon.

Q. And did you get any replacement that day?

A. There was one kid that come up and worked in the afternoon.

50 Q. To bring this crew to four?

A. Yes. There were four men.

Q. Do you recall who those people were that went home in the afternoon time?

A. I think it was Bill Bauer and Dock Ringler went home.

Q. You mentioned Dock Ringler. This is the past last summer?

A. Yes.

Q. This Dock Ringler, is that Frank? Is that his real name, do you know?

A. Yes.

Q. Now, do you recall the day of the fire?

A. Yes.

Q. Do you recall what day of the year it was?

A. It was in '67, 30th of August.

\* \* \*

Q. Now, did you work the day of the fire?

A. The fire broke out right after we went back to work after dinner and they come and told us that there was a fire and we all went outside and stood out there and watched it.

Q. You worked that day then?

A. Yes.

Q. Do you remember what your wage rate was at that time?

51 A. Two and a half dollars an hour.

Q. What did your rate run before, do you recall?

A. A dollar seventy-five.

Q. And did you get any increases?

A. Yes.

Q. And how many increases did you get, do you remember?

\* \* \*

A. I think it was three.

Q.. Well, after you were there a certain period of time did you get an automatic increase?

A. Yes.

Q. And then after that did you get further increases?

A. Uh-huh (indicating the affirmative).

Q. And that would make two dollars and fifty cents?

A. Yes.

Q. When was the last increase you received, do you recall?

A. I think it was in January the 30th?

Q. Of what year?

A. '67.

Q. Now, you testified that when you went to work on the day of the fire how many men did you have on your crew then?

A. Six men that day.

52 Q. Now, directing your attention to the week of the fire, do you recall how many hours a day you were working?

A. Nine hours a day.

Q. And the week before that.

A. Nine hours.

Q. Now, going again to the day of the fire after the fire was a meeting called by the company?

A. Yes, it was.

Q. Would you tell us where the meeting was and what was told to you at the meeting and what you observed and what time of day?

A. Well, the meeting was held there by the superintendent's office and Hussey was talking and he asked the superintendent if they thought they could get anybody to go back to work by Friday and the superintendent said no and so they set it up for Tuesday the way I understood it. Try to get back to work on Tuesday the way I understood it.

\* \* \*

Q. Now, was anything said during that speech about what would happen if you didn't come in the next time they started work?

A. No, there wasn't.

53 Q. Now, directing your attention to the period right after that meeting then during the period of the same day did you have a conversation with Karl Hoover?

A. Yes, I did.

Q. Would you tell us how the conversation occurred and what was said during the conversation and everyone that was present?

A. I went up to him and I asked him if they had any work to be done I would be home and all they had to do is call me and I would come into work.

Q. Was there anyone else present there?

A. Rapp was standing right there beside me.

Q. And was that Floyd Rapp?

A. Right.

Q. And did he have a conversation there in your presence with

Hoover?

A. Yes. Hoover asked him if he wanted to work and Rapp said, "No, that he was single and to let the married men work."

Q. When did you talk to him, before or after it happened?

A. After it happened.

Q. And did Hoover answer you?

A. He didn't say anything. Just hunched his shoulders up and didn't say anything whether he would call me or whether he wouldn't call me.

Q. Now, directing your attention to the following Tuesday after the fire, September 5, did you get a call from the company?

54 A. No, I didn't.

Q. Did you try to call the company?

A. Yes, I tried to, but my phone was dead.

Q. What time did you try to call the company?

A. I tried at 8:00 o'clock in the morning and my phone was out.

Q. Do you have a private phone?

A. No, I have a six party line.

Q. Have there been any occasions when the receiver has been left off the hook by another party?

A. Yes, there has.

Q. And what has happened in such an instance?

A. The phone is just dead.

Q. Now, directing your attention to that morning did you attempt

to call the company again?

A. Yes. I tried four or five times to call the company and every time I picked the phone up it was dead.

Q. Okay. Now, did you call the company that day successfully?

A. Yes, around 2:00 o'clock in the afternoon I finally picked the phone up and it was working and I called the switchboard operator and asked her if they were working and she said, "Just wait a minute and I'll get a hold of somebody that knows something."

Q. All right. And after that did you receive a call from the company?

A. About ten minutes later, Charlie Warren called me.

Q. All right. Would you tell us now everything that was said  
55 during that conversation with Charlie Warren?

A. Well, I picked the phone up and said, "Are you working," and he said, "Yes." And I started talking to him and then he turned around and told me that my card had already been pulled. And we talked there for awhile and I said I would be in in the morning.

Q. Was this in the conversation?

A. I just told him I would be in on Wednesday morning.

Q. Did you ask him any questions about your card?

A. I asked him why they pulled the card.

Q. And what did he say?

A. He said they had orders to pull it and then he hung up and I went in the next morning.

Q. Let's go back to the conversation on the phone. Did he say anything do you recall about replacements?

A. Yes, he said he had four men ready to go to work that morning.

Q. And what did he say about the four men?

A. He said they had four men ready to go work and a replacement for me.

Q. Did you tell him why you tried to call the company and why you called them.

A. I told him I wanted to find out if they was working. I wasn't sure if they were going to go <sup>to</sup> work or not on Tuesday.

Q. Now, directing your attention to the next day, Wednesday, September 6, you went into the plant?

A. Yes.

56 Q. And what time did you get there?

A. Around a quarter to seven.

Q. Was your time card in the rack?

A. No, it wasn't.

Q. And then what, if anything, did you do that morning at first?

A. I sat down and was talking to the men there and pretty soon Karl Hoover come up and said that the superintendent wanted to see me. I said where is he and he said that he was in the office. So I went in.

Q. And did you have any conversation with the superintendent, that is Charles Warren?

A. . Charles Warren.

Q. Did you have a conversation with him in his office?

A. Yes, I did.

Q. All right. Now, would you tell us what you said to him and what he told you?

A. I went in there and sat down and I said my phone was out of order and I couldn't get a hold of the factory until 2:00 o'clock in the afternoon and if I knew they was going to work I would have been in that morning.

Q. Do you recall if anything else was said?

A. Well, I told them I had a little upset stomach and that if I had knew they were going to work I would have been in anyhow.

Q. Do recall if anything else was said?

A. Well, he said, I said I wanted to see Weaver and he said, "Well,  
57 the word is final," and the way he talked to me he wanted me to leave, you know, and not see Weaver.

Q. All right. Now, going back to this conversation, do you recall if anything was said about your time card either by you or Mr. Warren?

A. All he said was they just pulled my card on account I didn't report in.

Q. And then what happened, if anything, after that conversation with Warren?

A. After that he got up and went out into the plant and I sat

there and waited on Weaver until he come in a little after 9:30 before he come in.

Q. Did you have a conversation with Weaver?

A. Yes, him went out with someone in the office and talked for three or four minutes.

Q. Now, tell us if you can, what you said to him and what he said to you?

A. Well, I asked him why he'd pulled my card and he said because everybody had been to work that morning. Everybody showed up for work and we talked there three or four minutes and he said I was done so I parted back into the office and he wanted to know where I was going and I said I was going to get my tools. So I went back in there and Charlie Warren followed me and went back to the factory and got my tools and left.

Q. Now, during that morning you were in the area of Mr.

58 Warren's office did you see Mr. Hussey?

A. Yes, I did. He walked through there and as I was sitting in the office.

Q. Now, was this before or after you saw Mr. Weaver?

A. Before.

Q. And did you talk to Mr. Hussey that day?

A. No, I asked the switchboard operator if I could talk to him and she went back to his room and she came back and said he didn't want to talk to me.

Q. Now, directing your attention to the time when you went back to get your tools from Charlie Warren, did you have any conversation with him?

A. Yes, he warned me to get out of the building right away.

Q. Did Mr. Warren say anything to you?

A. He didn't say too much, just went in there to get my tools, and just told me to leave right away.

Q. You left the plant that day?

A. Yes.

Q. Now, since that day have you ever received anything from the company other than a check?

A. No.

Q. Now, after that day that you went in to the plant and talked to these people, September 6, did you return to the plant after that?

A. Yes, I did.

Q. All right. Would you tell us when you returned to the plant,  
59 what happened at that time, and who you saw?

A. I came back down in there, went up on the staff and talked to the roof crew, and then I got down and went over and talked to Marty and told him I wasn't working and everthing and I was just getting about ready to leave just standing near the roofs and Karl Hoover looked down that way and he turned, went over, I suppose he went over to the superintendent's office because pretty soon here comes the superintendent and told me to get on out of the building.

Q. Did he mention Hoover's name?

A. No.

Q. Who was Marry?

A. That is the head of the union.

Q. Do you know his last name?

A. Graft.

Q. Is he in the building?

A. Yes, he is.

Q. Where?

A. Sitting back there.

Q. The gentleman in the white shirt, former manager?

A. Right.

Q. Now, you mentioned superintendent, who was that?

A. Charles Warren.

Q. No. Maybe you misunderstood me. Did you mean Mr. Weaver?

A. Yes, I got to talk to him one time.

60 Q. Do you know what job he has at the plant?

A. I don't know what job. I'm not sure what job he has.

Q. Now, directing your attention to the year 1967

from January up until the time of your discharge, were you ever absent?

A. No, I wasn't.

Q. Now, going back to the day you came back to the plant and

talked to Marty, did Weaver say anything to you?

A. No, he didn't.

Q. Now, during this past year, 1967, from January until the time of your discharge, were you ever late?

A. No.

Q. Now, during 1966, were you ever absent without somehow notifying the company?

A. No. I let the company know when I was off.

Q. And during from January back to the time you started were you ever late without notification to the company?

A. Not that I know of.

Q. Now, could you state whether or not at the time you were employed had you ever missed any work without calling in to the company or notifying them that you were going to miss work other than the day that we are talking about, the day you were fired?

A. Yes, I got off three or four times early and I called Hoover and he okayed it. One time I got off early to go get my wife. One time I left at 3:30 and I got an okay from Karl Hoover and he said go ahead.

61 Q. Now, these times you just testified to, these were times when you left work early; is that correct?

A. Yes.

Q. And had you notified anybody at this time?

A. Yes.

Q. Whose that?

A. Karl Hoover both times.

Q. Now, let me ask you this question; from January anytime you were there other than the day you got fired were there any days that you missed work without telling the company you were going to miss work?

A. No.

Q. Were you ever warned by the company about missing any work?

A. No.

Q. Were you ever disciplined by the company for missing work?

A. No, I was never disciplined by the company, no.

Q. Were you ever warned you were going to be fired for missing work?

A. No.

Q. For failing to report in?

A. No.

Q. I mean by anyone from supervision?

A. No.

Q. Now, did you ever get a handbook when you hired in with  
62 the rules and regulations?

A. No, I didn't.

Q. Have you had a handbook with rules and regulations?

A. No, I haven't.

Q. Have you ever gotten any literature from the company describing rules and regulations about absenteeism or missing work?

A. No.

Q. Have you ever received any literature from the company about missing work or failing to report in?

A. No.

Q. Now, since that two days you were fired, were you ever rehired by the company?

A. No.

Q. Have they ever asked you to come back?

A. No.

\* \* \*

#### CROSS EXAMINATION

Q. (By Mr. Shea)

\* \* \*

63 Q. And you were the only person around the plant wearing union buttons?

A. No, there were three or four of them that wore union buttons.

Q. They just wore them openly, didn't they?

A. Yes.

Q. Mr. Ted Auer didn't have to come around the coach and get a glimpse of it, did anyone ever object to you wearing your union button?

A. No.

Q. A number of them wore them; isn't that correct?

A. Yes.

Q. And during that period of time you said you talked about the union on the job and during working hours; isn't that correct?

A. Yes.

\* \* \*

64 MR. SHEA: The point I'm making, Your Honor, we have had a situation here I want to show the evidence is redundant in the representation case in this connection union interference. No interference, no letters, no handbills, no speeches, no requests anything from the company in connection --

TRIAL EXAMINER: There is no claim from the General Counsel there was an interference of the election.

Q. (By Mr. Shea) Mr. Newby, you were the only person handing out handbills?

A. No. There are a lot, there must have been seven or eight of them handing out handbills.

Q. So there were seven or eight people handing out handbills?

A. Yes.

Q. This went on from prior to the election back 1966 right on through the day of your discharge; is that correct?

A. That is right.

Q. Actually there were more than seven or eight. Actually

there would be ten, fifteen people or more handing out?

A. I suppose all the union members hand out handbills. About 8 or 9.

Q. And there was no attempt by any of those people to hide the fact that they were handing out handbills were there?

A. No.

65 Q. Mr. Newby, going back before the fire, the day before the fire and the day of the fire, during your employment at Liberty Coach Company were you ever individually singled out and treated in a way of second class citizen or anything like that?

A. No, I wasn't.

Q. Mr. Ted Auer always treated you graciously, didn't he?

MR. STIEGLITZ: Objection.

EXAMINER: Objection overruled.

A. Yes.

Q. He never threatened you in any way, shape, or form, did he?

A. No.

Q. In other words, you never failed to have security in your employment at Liberty Coach up until the time you were discharged, is that correct?

MR. STIEGLITZ: Objection.

TRIAL EXAMINER: Objection overruled.

A. No objection as far as I know.

Q. You had no feeling of insecurity as far as your employment?

A. No, but the only thing I come up against if I work all year and miss one day of work and then I get fired.

\* \* \*

69 Q. How many men are required in your production line, rolling top coach and things like that, how many are required on the roof in your opinion?

A. Six.

Q. That is what should be up there?

A. Yes, to get the work done and get the coaches out.

Q. But the problem has been your are aware of the fact that the company has a very substantial turnover every year for the past two or three years; is that correct?

\* \* \*

70 A. Yes.

\* \* \*

Q. But you do know that six is the required number?

A. Yes. There should be six up there.

Q. Is that an easy job or a hard job?

A. I didn't figure it was a hard job.

Q. If it isn't done or accomplished it slows the whole line down doesn't it?

A. Yes, it does.

\* \* \*

71 Q. Now, going back to September that was the date September

30 of the fire on Wednesday?

A. Yes. It was on August 30.

Q. On August 30, Wednesday, you left Liberty; is that correct?

A. Yes.

Q. Did you come back around the plant on Thursday?

A. No, I didn't.

Q. On Friday?

A. No.

Q. On Saturday?

A. No.

Q. On Sunday?

A. No.

Q. On Monday?

A. No, I wasn't around on Monday.

Q. Where were you?

A. Home. I was home all them days. I told Hoover if he needed someone, I would be home, call me.

Q. You didn't go on vacation?

A. No.

Q. Weren't you told, Mr. Hoover told his group of people that if anyone wanted to take a chance on working on Thursday that they should come in?

A. He didn't tell me that.

Q. Did you talk to any of the men from Liberty over the week-end?

72 A. No.

Q. Never saw any of them?

A. No.

Q. Never talked to any of them?

A. No., I didn't.

\* \* \*

Q. Did you normally drive alone or was somebody else with you when you came to work?

73 A. Generally I was by myself.

Q. You never drove, who would you drive with if you didn't drive by yourself?

A. I always drove my own car whenever I went to work?

Q. Did you pick anybody else up and take them?

A. There for a while I picked up, Fidler up and hauled him to work for a while.

Q. And did that situation continue up until the fire you picked up Fidler and take him to work?

A. Yes.

Q. What time would you leave the house?

A. Oh, about quarter after six.

Q. And you would get to Fidler's house about what time?

A. Oh, about 25 after 6.

Q. And did you have coffee at his house?

A. No, he'd come right out we went right on the way.

Q. And this you did every day during that period?

A. Yes.

Q. Before the fire?

A. Yes.

Q. And on the day of September the 5th, which was Tuesday, did you go to Mr. Fidler's house in the morning?

A. No, I didn't.

Q. Why not?

A. Well, I understood it it wasn't sure whether they were going

74 back to work on Tuesday or not.

Q. You didn't bother calling Mr. Fidler?

A. No, I couldn't call. My phone was out of order.

Q. But you testified you tried to call Liberty at 8:00 o'clock?

A. Yes, the phone was out.

Q. What time is the starting time at Liberty?

A. 7:00.

Q. And you ordinarily would have left your house then at 6:00?

A. A little after 6:00, yes.

Q. But you didn't make any attempt, what time did you get up that morning?

A. I got up around 6:00 o'clock.

Q. What did you do when you got up?

A. My wife was up and she went to work and I worked around the house because I wasn't sure whether they were going back to

work.

Q. But you didn't call Fidler?

A. No.

Q. Or anybody else?

A. No.

Q. But at 8:00 o'clock you picked up the phone and tried to call Liberty?

A. Yes.

Q. To see if you were going back to work that day?

A. Yes.

75 Q. Weren't you going to be a couple hours late if you waited until 8:00 o'clock to make the call if they were going back to work that day? Or didn't you care?

A. Well, yes, I cared, but I was painting on my house and time slipped by and I didn't realize how late it was and it was 8:00 o'clock when I tried to call them, the phone was dead and I tried four or five times after that and it was still dead and finally at 2:00 o'clock in the afternoon that's when I picked the phone up and got through.

Q. You were painting on your house?

A. Yes.

Q. And you went in from painting on your house to pick up the phone and call Liberty?

A. Yes.

Q. But the phone was dead, right?

A. Yes.

Q. So you went back out and continued painting?

A. Yes, and I came back in about a half hour later and it was still dead.

Q. And then you came back in and went back out to paint?

A. Yes.

Q. And you came back in again when?

A. About a half hour I suppose and tried to call in and it was still dead.

Q. And then you went back out painting, right?

A. Yes.

76 Q. Came back in again?

A. Yes. I tried about four or five times. Tried to get through and the line was always dead.

Q. What time did you go out to do the painting in the first place?

A. Oh, I suppose around 6:30, a quarter to seven.

Q. And what part of your house were you painting?

A. I painted my whole house. I painted the whole house this last summer.

Q. Well, had you done any painting the day before, Sunday?

A. No, cause we was gone.

Q. Where were you gone?

A. We was over at our friend's house.

Q. Where does your friend live?

A. Right over about a mile from us. We went over there for dinner.

Q. What about before dinner?

A. No.

Q. Did you paint it on Saturday?

A. Yes, I painted a little on Saturday.

Q. Did you paint some on Friday?

A. Yes, when I was off. I was off on account of the fire.

Q. So how much of your house did you have left to paint on Tuesday?

A. Oh, I was just about done. I only had the back part to paint.

Q. So how many hours worth of work did you have left on  
77 Tuesday morning when you got up that morning at 6:00 o'clock or whatever?

A. Oh, I'd say three, four hours of work.

Q. So when did you finish that work?

A. I painted the rest of the house that day but I still couldn't get through the line. I finally picked it up and it wasn't dead.

Q. What time that day would you say you finished the painting?

A. Oh, I'd say about 11:00 o'clock.

Q. And how did your stomach feel at this time when you were doing this painting?

A. It hurt a little but I was still able to go ahead and work.

Q. In other words, you didn't have a stomach condition that

was bothering you to the point that it would interfere with your work or cause you great discomfort or anything like that when you were working?

A. Not that much, no.

Q. You weren't really sick then were you?

A. I really wasn't sick. I could have worked if I'd knew they was going to work I could have worked.

Q. Well, not only that, when you were home and painting you had a choice between not working and taking it easy. Under your condition you still went out and painted, isn't that correct?

A. Yes.

Q. With no apparent reason, apparantly, to do so because you only had a few hours work left; isn't that right?

A. Right.

\* \* \*

79 Q. Have you ever received any warnings?

A. No.

\* \* \*

83 Q. When you first called in to Liberty on the 5th would you state the time again, the 5th of September?

A. Around 8:00 o'clock I tried the first time.

Q. When did you finally get through according to you?

A. Around 2:00 o'clock in the afternoon.

Q. Who did you talk to then?

A. I talked to the switchboard operator.

Q. And what did you ask her?

A. I asked her if they was working and she said she would have to get a hold of somebody that knows and about ten minutes later Charlie Warren called me back.

Q. Well, didn't, during this period of time couldn't you have taken, why didn't you take two minutes out and go down and see whether Liberty was working?

A. I really didn't think about it. I was working around the house there and it just kind of slipped my mind.

\* \* \*

Q. Every day, you have never missed any work at Liberty?

A. Three or four times in my whole life I ever missed.

\* \* \*

84 TRIAL EXAMINER: The testimony is in 1966 whenever you were absent you had notified the company of your absence?

THE WITNESS: Yes.

Q. (By Mr. Shea) Were you ever sick?

A. Not very often, no.

Q. If you were, you called in is that right?

A. Yes.

Q. You knew that was the rule didn't you?

A. Yes, I did.

Q. Do you recall Mr. Hussey, in August of 1967, when he spoke

to all of the employees that it is not going to be like Grand Central Station, your all going to have to get in here on time, yourall going  
85 to have to give your notices if, of your absence?

A. I was there at the meeting.

Q. And you recall that specifically in August of '67?

A. Yes.

Q. You do recall Mr. Hussey asking the superintendent if he couldn't get the plant back in production by Friday; is that correct?

A. Well, he couldn't, said he couldn't.

Q. It was obviously Mr. Hussey said that he could; isn't that correct?

A. Yes.

Q. And you did know didn't you that many, many men were working there night and day to get that plant back in production?

A. Yes, I asked to work.

Q. No, you said if you want me call me; isn't that correct?

A. Yes, I told Karl Hoover that if you want me I'll be home and all you have to do is call me and I'll be in to work.

Q. All right. But you knew that work was going on; isn't that correct?

A. Yes, I knew they was working.

Q. And you knew the objective was to be back at work Tuesday morning; isn't that correct?

A. The way I understood they wasn't so sure they were going

to make it or not.

Q. You didn't know whether they were going to make it is what you said but you knew what the objective was to make it; isn't that correct?

86 A. I wasn't sure. I wasn't sure whether they'd make it or not. Get back in operation or not, nobody let me know if they was back in operation or not.

Q. Do you know of any other employee who had the same impression that you had that they were not to come in unless called?

A. None that I know of offhand. But it was a Tuesday morning and there was a man off that wasn't there.

Q. You weren't there Tuesday morning were you?

A. No.

Q. You know of nobody that had the understanding you had; is that correct, to your personal knowledge?

A. Not that I know of.

Q. You did know Mr. Hussey had numerous talks out there, hadn't he, or several at least, on slowing the progress of production?

A. Yes.

Q. And you knew the work wasn't getting through there and there had been a lot of talk back and forth about business being down and things of that nature due to production loss; isn't that correct?

A. Yes, I heard that.

Q. You knew then, that Mr. Hussey talked about cancellation of orders because of loss of production?

A. I heard him say it.

Q. You heard him talk about slow downs in the production line?

MR. STIEGLITZ: Objection.

TRIAL EXAMNER: Objection is overruled.

A. I never slowed production down.

Q. The production line was slowed down wasn't it?

A. Not that I really know of. I always done my job when I was there.

Q. There had been gaps after roofs and after these other operations right? There had been problems in getting the productions out, slowed down because of lack of experience, people, other things?

A. The guys, new guys there couldn't get the production out. You get a bunch of new men on the job you can't get it to work out.

Q. That is something else again. You knew that there were new men on these jobs and you knew there were problems that --

TRIAL EXAMNER: I think you have established or at least you've indicated that the company has had production problems for some time prior to Labor Day.

\* \* \*

87

#### REDIRECT EXAMINATION

Q. (By Mr. Stieglitz) Other than the day after Labor Day during 1967, from January until the time of the fire, did you have any missed absences from work?

A. No.

Q. Now, since you've been there other than this time after the fire, how many times did you miss work not because you left early but because you didn't come in in the morning?

A. One time. I had some business to take care of and I  
88 wouldn't be in for a couple of hours late.

Q. Did you go to work that day?

A. Yes, I did.

Q. Now, were there any days that you didn't work at all during the time you were there?

A. Not that I know of, no.

Q. What about the year 1966?

A. Well, there was a couple three days I was off.

Q. Are those the ones you testified to about?

A. Yes.

\* \* \*

90 MR. SHEA: We'd like to submit a letter from the UAW committing us on our election.

TRIAL EXAMINER: We have not had that in the record so whatever it may be worth I will give neither of these background things any weight whatsoever.

\* \* \*

FLOYD A. RAPP,

was called as a witness by and on behalf of General Counsel, after having been first duly sworn, was examined and testified as

91 follows:

DIRECT EXAMINATION

Q. (By Mr. Stieglitz)

\* \* \*

96 Q. (By Mr. Stieglitz) Do you know if Yoder came in the day after Labor Day?

A. Came in after Labor Day, no.

Q. Do you know why he didn't come in?

A. He was leaving for another trip.

Q. When did he leave?

A. His last day was the day of the fire. He was planning on quitting that week anyway.

Q. Now, directing your attention to Tuesday, the day you returned after the fire, how many men were on the roof crew then?

A. Three.

Q. Who were they?

97 A. Eli Yutze, Clyde Campbell and myself.

Q. And that day did you receive any replacements?

A. Yes, we did. Two.

Q. Do you recall who they were?

A. Elden Kemp and Lloyd Yoder.

Q. Had they worked for the company before?

A. Not that I know of.

Q. What time did you start work that morning?

A. 7:00 o'clock.

Q. What time did Kemp and Yoder, if they did, come to your area?

A. Approximately a quarter after seven I would say.

Q. And do you recall how they came to your area under the circumstances?

A. We were short of help and they were assigned there.

Q. Do you recall who brought them to you?

A. Karl Hoover.

Q. Now, earlier that morning, had you seen these individuals?

A. Yes, I saw them three places when I punched in.

Q. And who did you see then?

A. Elden Kemp and Lloyd Yoder and there was another one and I suppose it was Larry Yoder.

Q. Now, directing your attention to that day, Tuesday, how many men did you work with?

A. Up until the Tuesday? Five men.

98 Q. And on Wednesday, how many were working?

A. As far as I know we had five men Wednesday.

Q. And did you receive any replacement on Thursday?

A. Leroy Whiteman.

\* \* \*

100 Q. Do you recall on Tuesday, the day you returned after the fire, the production the roof crew turned out?

A. As near as I know 10 and a half coaches were done with the five men.

Q. And if you could tell us how many coaches you did with a six man crew?

A. It varies in size but about 12.

Q. And how many days had you worked the week of the fire, how many hours a day?

A. Nine hours a day.

Q. How many days and hours were you working the week after the fire?

A. We worked five nine hours the week after the fire.

Q. Now, going back to the on September 5, Tuesday morning, do you have any occasions to observe the time/<sup>card</sup>rack in the morning?

101 A. Yes, I did.

Q. When was the first time you went to the time card rack?

A. After each coach.

Q. Do you recall the first time you went there in the morning?

A. Probably 7:30 or 7:45.

Q. And did you have occasion to observe the out rack?

A. Yes.

Q. And what, if anything, did you observe in the out rack?

Whose card was in the out rack?

A. Willis Newby's.

Q. And would you state whether or not you observed anyone else's time card?

A. I didn't notice any.

Q. All right. And then when do you have lunch?

A. 11:30 to 12:00.

Q. Now, before 11:30 did you go by the time card rack again?

A. Yes.

Q. And did you observe anything at the time?

A. Willis Newby's card.

Q. Did you see any other cards?

A. I didn't see any.

Q. Where was Willis Newby's card?

A. In the lower right side on the out rack.

Q. Now, after lunch did you go by the time cards and if you did when was the first time you went by the rack?

102 A. I went, completed a coach at twenty after twelve and his card was still in the rack.

Q. Whose card was that?

A. Willis Newby's.

Q. This is at 12:20?

A. 12:20.

Q. Did you see anyone else's card in there?

A. I did not see anybody else's.

Q. Now, after 12:20 when was the next time you recall going to the time card rack?

A. Approximately 1:00.

Q. Were you alone?

A. Clyde Campbell, myself, and Karl Hoover.

Q. And what, if anything, did you observe in the out rack or the time card rack?

A. Newby's card was gone.

Q. Now, did either of you have a conversation with Mr. Hoover?

A. Campbell asked Hoover what happened to Slim's card? That is his nick name.

Q. And what did Hoover say?

A. I don't know what happened to it.

Q. At about what time was this?

A. This was right at 1:00 o'clock.

Q. And after that did you go by the time card rack again?

A. Yes, I did.

103 Q. And did you observe any cards in the out rack?

A. No, I didn't.

Q. Now, state whether or not during that morning or afternoon

up until the time you spoke with Hoover up until the time Hoover was confronted whether or not Amos Yoder's card was in the out rack?

A. I never noticed it.

\* \* \*

Q. Have you ever been distributed while you've been employed there any rules by the company as to any disciplinary action of, if your absent, identification?

A. I haven't, no.

Q. Have you ever received any rules and regulations from the company action if you failed to report in at a certain time?

A. No, I haven't.

Q. Now, directing your attention to 1967, have you ever been absent and failed to report and call in that day?

A. Yes, I have.

Q. Would you please state when this occurred?

A. 1961 and this past year, Good Friday,

Q. Well, what happened on Good Friday, did you call the company?

A. No, I didn't.

104 Q. Did you report in that day?

A. No, I didn't.

Q. What happened, if anything, after you returned to work the next day?

A. Nothing.

Q. Was there anything said to you?

A. Not a word.

Q. Were you ever warned or criticized?

A. No, I wasn't.

Q. Now, on the day of the fire, did you have a conversation with Karl Hoover about work?

A. Yes, I did.

Q. Would you please tell us then how the conversation occurred, at the present, what was said?

A. I walked past the card rack and he was standing there and he says Rapp, do you want to work? And I said no. I would just assume you pass it off to a married man but I said if you need help to give me a ring and I would be glad to help and I just continued out.

Q. Was there anyone else there that you observed or talked to Mr. Hoover?

A. Willis Newby was right behind me.

Q. Did he talk to him before or after you?

A. After I did.

Q. Would you please tell us the conversation that you know of that  
105 existed between Mr. Newby and Mr. Hoover?

A. Mr. Newby said, "Karl, do you need any help?" Karl said, "No." I continued on out and I didn't hear mention anything.

Q. Do you recall Hoover addressing a group of employees

about working?

A. No, I don't.

Q. Are you presently on a committee?

A. Administrative committee I am.

Q. Do you recall when that was appointed?

A. About the 26th of July.

Q. Was Willis Newby at the meeting?

A. Yes, Willis Newby.

Q. Was Willis Newby appointed on that committee, elected?

TRIAL EXAMINER: We have a document in evidence that shows he was on a committee.

Q. I hand you what has been previously marked and introduced into evidence as General Counsel's Exhibit Number 6. Did you help to distribute that leaflet?

A. Yes, I did.

Q. And do you recall when about that leaflet was distributed?

A. It was right after certification.

Q. And state whether or not you observed Willis Newby distributing that handbill on that date?

A. I know he distributed, I don't know what that day it was, I was at the east end of the building myself.

106 Q. Did you see him that afternoon?

A. Yes, he was at work.

Q. Did you see him distributing?

A. No, I can't say that.

Q. Did you see, during August and September, did you see Willis Newby distribute any handbills?

\* \* \*

### CROSS EXAMINATION

Q. (By Mr. Shea) Mr. Rapp, on the day of the fire you heard Mr. Hussey talk, isn't that correct?

A. Right.

Q. And at that time Mr. Hussey said explicitly that he wanted to try to get back by Friday but we would probably have to shoot for Tuesday and then work 9 hours Tuesday, Wednesday, Thursday, Friday and Saturday, correct?

107 A. Right.

Q. And you showed up in accordance with his direction, isn't that correct?

A. Yes, I did.

\* \* \*

### REDIRECT EXAMINATION

Q (By Mr. Stieglitz) Mr. Rapp, you have just been asked by the Counsel of the Respondent statements made in a speech by Mr. Hussey, would you please tell us everything you have heard about that speech, entire speech, please?

A. He called us together, "Barring the fire and no flare up again I would like to go back Friday, maybe a little too close. We

Could get parts real fast and we've asked Mr. Charlie Warren if he posted next week's schedule, we'll shoot for Tuesday, nine hours Tuesday, Wednesday, Thursday, Friday, and Saturday." But definitely I didn't know/sure whether we would go back. I figured on it myself. I really planned on it, but I wouldn't have bet on it 100% condition of the fire.

Q. Would you state whether or not Mr. Hussey mentioned anything any action would be taken to an employee if he did not come in Tuesday?

A. No. And he asked some of the foreman to have some of the fellows stay salvage coaches that was nearly completed in the lot.

Q. Was anything mentioned by him about contacting people?

108 A. Yes. "If we needed you we would notify you."

\* \* \*

111

AMOS C. YODER,

was called as a witness by and on behalf of the General Counsel, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Stieglitz)

\* \* \*

112 Q. Now, did you work the day of the fire?

A. Yes.

Q. And on what crew were you on?

A. Roof crew.

\* \* \*

Q. Do you know this gentleman over here (indicating)?

A. Yes.

Q. I want the record to show I'm pointing to Willis Newby.  
Did you work with that man?

A. Yes.

\* \* \*

Q. Now, prior to the fire did you tell anybody that you were leaving?

113 A. Some of them knew, yes.

Q. What did you tell them?

A. I just told them that was my last week?

Q. Was that the week of the fire?

A. Yes.

Q. Directing your attention to the day after the fire on Thursday, did you go back to the plant for any reason?

A. Yes, I went back and got my tools.

Q. And while you were at the plant, what, if anything, can you tell us what happened when you went back to get your tools?

A. Went in and got my tools and to tell Hoover I was quitting.

I tried to get to Karl Hoover, my foreman. He was upstairs in the paint room. I started up the stairs and a man stopped me and told me I could not go up there because they were tearing it down because of the fire;

He asked me what I wanted and I told him I wanted Hoover because I was quitting. He told me I could not go up there so I told him to tell Hoover I was quitting

Q. Did he say he would tell Mr. Hoover?

A. Yes.

Q. Did you quit at that time?

A. Yes.

\* \* \*

114

#### CROSS EXAMINATION

Q. (By Mr. Shea) Did you say the week before the fire was going to be your last week; is that correct?

A. The week of the fire.

Q. That was your intention, in other words, you didn't intend to work after that?

A. No.

Q. Had you told Mr. Hoover this?

A. No, I didn't.

Q. Had you told Mr. Hussey or the plant superintendent or anybody?

A. Nobody but just the group.

Q. Had you told Mr. Newby?

A. I told someone, I don't know whether he knew it or not.

Q. The group that you worked with pretty well knew it?

A. Yes.

Q. You didn't come in for work at 7:00 o'clock on Tuesday then?

A. No.

Q. It wasn't your intention to?

A. Nope.

Q. That Tuesday following the fire, what time did you come in  
115 on Tuesday.

A. I didn't come in.

Q. On Tuesday?

A. No.

Q. It was after Tuesday that you came in. What day did you  
come in to pick up your tools?

A. The day after the fire. It was on a Thursday after the  
Wednesday of the fire.

Q. I see. That week of the fire. I see. And who did you talk  
to that day? Somebody was at the foot of the steps.

A. I don't know who he was. He was an Amishman at the  
bottom of the stairs.

Q. He wasn't from supervision or anything?

A. No.

Q. You don't know his name or anything?

A. No, I don't.

\* \* \*

was called as a witness by and on behalf of the General Counsel,  
after having been first duly sworn, was examined and testified

as follows:

DIRECT EXAMINATION

\* \* \*

Q. (By Mr. Stieglitz) Mr. Yoder, have you ever worked at Liberty Coach?

A. Yes, I have.

Q. Was it during this year; 1967?

A. Yes.

Q. And could you tell us if you recall when you had a fire at Liberty Coach?

A. No, I can't tell you the date.

Q. Do you remember the incident?

A. Yes, I remember the incident.

TRIAL EXAMINER: The fire occurred on August 30th of this year.

Q. Now, during that week did you were you working at the company during the week of the fire?

A. No.

Q. Did you go to the company plant for any reason after the fire during that week?

117 A. Yes, I was looking for a job. I had looked at a couple other places too and I was kind of curious, I wasn't doing nothing that day and so I thought I'd look for a job.

Q. Did you see any representative of the company to speak to

you about a job?

A. Yes, I seen Charlie Warren.

Q. And did you have a conversation with him?

A. Yes. I asked him about a job and he did not definitely promise me. He says if I come back at the next day he started work he probably could possibly get me a job, but he made no promises or anything.

Q. Did he say anything about when they would come back?

A. Yes, he thought it would be Tuesday but then he couldn't promise me and I would see him personally and he said to check with the guys and make certain that it's Tuesday.

Q. Did he say that it was definite that you would be hired Tuesday?

A. No, not definite but he said it possible. Come in at 7:00 in the morning and see me about the time clock.

Q. Did he say anything regarding the fires setting back hire?

A. I can't recall really. He said he was interested most any time in experienced help.

Q. And did you go to the plant on Tuesday?

A. Yes, I did.

\* \* \*

118 Q. (By Mr. Stieglitz) Did he tell you, going back to the conversation with Mr. Warren, definitely when production would start?

A. No, he did not promise definitely. He said as far as he knew it would be Tuesday not an on the spot definite, oh, you know.

\* \* \*

120

CLYDE S. CAMPBELL,

was called as a witness by and on behalf of the General Counsel, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

\* \* \*

Q. (By Mr. Stieglitz) Mr. Campbell, are you presently working at Liberty Coach?

A. I am.

Q. And what position do you have?

A. I work on the roof crew.

Q. Do you recall when you hired in?

121 A. February, '66, about the middle of the month.

Q. And how long have you been on the roof crew?

A. Since I've been hired.

Q. And do you punch a time clock?

A. I punch time clock.

Q. And do you/<sup>know</sup> what time clock the roof crew punches, do you punch the same card?

A. I punch the same clock, right.

Q. Which rack is that?

A. It's the west rack.

Q. And would you describe the time card rack physically.

A. You have an in and out rack with a time clock in the middle and the out rack is the one on the far side of the clock, on the north side is the in rack.

Q. And directing your attention from a period of time from March, 1967, who is your foreman there?

A. Karl Hoover.

\* \* \*

122 Q. Now, directing your attention, do you recall when the fire was August 30th, 1967?

A. Yes, I recall.

Q. And did you work that day?

A. Yes.

Q. How many did you have on your crew on that day?

A. Six.

Q. Do you recall who they were?

A. Yes.

Q. Please tell us.

A. Willis Newby, Floyd Rapp, Ray Chupp, Amos Yoder, Eli Yutze and Clyde Campbell.

Q. And yourself?

A. Right.

Q. And did you go to work on the Tuesday after the fire?

A. Yes.

Q. September 5, 1967?

A. Yes.

Q. Were there any people on your crew that were not there?

A. After I went to work there wasn't.

Q. And who was that?

A. Willis Newby.

Q. Was Amos Yoder there?

A. Oh, no. Amos Yoder and Ray Chupp were not present.

123 Q. Do you know why Ray Chupp wasn't in?

A. Yes.

Q. What was that?

A. He quit.

Q. How do you know this?

A. He told me he quit.

Q. Did he tell when he was quitting?

A. The week-end of the fire.

Q. When did he tell you this?

A. He told me several times.

Q. What week is that?

A. The week before the fire.

Q. And do you know what happened to Amos Yoder?

A. He told me he was quitting.

Q. When did he tell you he was quitting?

A. The week of the fire.

Q. Did he tell you this?

A. He told me this on the day of the fire, he told me he wouldn't be back that he quit.

Q. And directing your attention to that Tuesday, did you work on a three man crew all day?

A. No. After the fire?

Q. Yes, the Tuesday after the fire.

A. No.

Q. Do -- Did you receive any replacements?

124 A. Yes.

Q. Do you know who they were?

A. Lloyd Yoder and Eldon Kemp.

Q. And had they worked at the company before?

A. Not that I know of.

Q. And do you know, did they start work at 7:00 o'clock when they started work?

A. No.

Q. Do you recall about when they started?

A. Approximately fifteen after seven.

Q. And who brought them up?

A. Hoover, Karl Hoover.

Q. Had you seen them any that morning at all?

A. Shortly after I crawled up on the roof for my duties I looked toward the time clock and they were standing at the time

clock.

Q. Do you have occasion to go near the time clock during the day?

A. Yes.

Q. What would prompt this occasion?

A. Each time we move a trailer there is a water fountain which is directly on the other side of the time clock.

Q. Now, directing your attention to that Tuesday in the morning before lunch did you have occasion to go over by the time clock?

125 A. Yes.

Q. Did you have occasion to observe the clock?

A. Yes.

Q. Did you have occasion to observe the outside of the card rack, that's the out rack?

A. Yes.

Q. Did you notice any cards there?

A. Yes.

Q. Whose card was there?

A. Willis Newby.

Q. And did you see any other cards?

A. I did not see any other cards.

Q. Now, when was the first time you recall going by that rack?

A. I went by several times. The first time I recall was at 10:20.

Q. And whose card did you see in the out rack?

A. Willis Newby.

Q. State whether or not you saw Amos Yoder's card there?

A. I did not see Amos Yoder's.

Q. Could you state whether or not you saw Ray Chupp's card?

A. I did not see Ray Chupp's card.

Q. And did you <sup>go</sup> by the rack more than once before the lunch break that morning by the time rack?

A. After ten twenty you mean?

126 Q. Yes.

A. Yes, one more time at least.

Q. And did you see Newby's card in there?

A. Newby's card was still in there.

Q. Was there another card there?

A. I did not see any other cards.

Q. Now, directing your attention after lunch did you make a trip by the time card rack after lunch?

A. Yes.

Q. Do you recall about what time that was?

A. It was about 12:30.

Q. And did you observe the out rack at that time?

A. Yes.

Q. Would you state whether or not there were any cards in that rack at that time?

A. Willis Newby's card was in the rack at that time.

Q. Were there any other cards?

A. No, I didn't see any.

Q. Now, after 12:30 did you have occasion to go back there again that afternoon?

A. Yes.

Q. And would you tell us when you went by the next time?

A. Approximately 1:00 o'clock. I was not alone.

Q. Who were you with?

A. Floyd Rapp.

127 Q. Did you observe the out rack at that time?

A. We observed the out rack at that time.

Q. What did you observe?

A. There was no card in the rack.

Q. Did you have any conversation with any foreman or supervisor?

A. Karl Hoover was standing by the time clock and I asked him what happened to his card and he said he did not know.

Q. Now, after that conversation during the rest of the day did you go by the card rack?

A. Yes.

Q. Did you notice any cards in the out rack?

A. No cards.

Q. Now, directing your attention to this past year, 1967, had there been any occasions when you have been absent from work and didn't call in?

A. Yes, I missed one Saturday.

Q. Do you recall when that was?

A. It was directly after the bowling tournament. Here we was working six days a week and I missed a Saturday.

Q. Who was your foreman then?

A. Karl Hoover.

Q. Did you call in and report?

A. No, I did not.

Q. Did you call during the day?

128 A. No, I did not.

Q. Did you return the following week?

A. I called the following Monday and returned.

Q. And was there anything said to you?

A. Yes, they asked where I was.

Q. What did you tell them?

A. I told them I was sick.

Q. And was there anything further said?

A. Nothing further said.

Q. And were criticized or reprimanded from anyone that day for not calling in?

A. No.

Q. Now, Mr. Campbell, going back to the week you returned after the fire, September the 5th, Tuesday, Wednesday, and Thursday, how many worked on on Tuesday?

A. Five. We started out with three men. Then they replaced them with two.

Q. You had five. How many did you have Wednesday?

A. Five.

Q. Now, directing your attention to Thursday, did you receive any replacements?

A. Yes.

Q. And who was that?

A. Leroy Whiteman.

Q. Was he still on the crew?

129 A. Yes.

Q. And where did he come from?

A. Side metal.

Q. And where is that in relation to your crew?

A. Directly east of our crew. They're the next job to do.

Q. Did he work on roof tops before?

A. Occasionally but not permanant.

Q. Occasionally was he a fill in?

A. I don't know whether he worked on them before or not.

Q. Now, you told us about one time when you actually didn't

call in. Have there been any other times during the last year that you have been absent and you didn't call in?

A. I can't possibly say. I'm pretty sure there were one more time but I could not testify to that fact.

Q. Now, since you've been employed there have you ever been handed any published rules or regulations about company disciplinary action if you were to miss work and not call in?

A. No, sir.

Q. Were any notices posted<sup>on</sup> the board about not missing any work and failure to call in would have to answer to?

A. No.

Q. Now, directing your attention to the day of the fire was there a meeting called by your company?

A. Yes.

Q. You were at that meeting?

130 A. Yes.

Q. Who spoke to you?

A. Mr. Hussey.

Q. And would you tell us now what he told you?

A. What he told the group?

Q. Yes.

A. Well, it started out as Charlie Warren and the superintendent. He talked about being back by Friday. He said he could get the parts real fast and Charlie said he didn't think they could so

then they said something about coming back Tuesday and they talked a little bit back and forth. I couldn't recall the exact words and they said that they would try for Tuesday, their target was Tuesday.

Q. And who said that?

A. Mr. Hussey.

Q. Can you state whether or not anything was said to you about absences on Tuesday?

A. Nothing was said.

Q. Anything said to you that action would be taken if you didn't come in Tuesday?

A. Nothing was said.

Q. Was there instructions about reporting in to work on Tuesday?

A. He just said the target was Tuesday is the way I understood it.

Q. What, if anything, was said about the attendance rules on Tuesday

131 A. Nothing.

Q. Now, directing your attention to Wednesday after the fire, did you work that day?

A. Yes.

Q. Did you see Willis Newby that day?

A. Yes.

Q. Did you see Charles Warren?

A. Yes.

Q. Did you have conversation with Mr. Warren about Mr. Newby?

A. Yes.

Q. Would you tell us how that conversation occurred and what was said?

A. It was back in the maintenance where we always have our break and it was between 9:30 and 9:35 Slim came in and he said, "They let me go" and he tried to tell me something and Mr. Warren in, "Let's go Slim," and that's when I got up and said, "What the Hell's going on," he got fired and he said he didn't call in and I asked him I said, "A lot of people haven't called in and they weren't fired," and he didn't answer any questions he said, "Come on Slim, let's go," and that was the extent of our conversation.

\* \* \*

133

TED NOLAN,

was called as a witness by and on behalf of the General Counsel, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

\* \* \*

Q. (By Mr. Stieglitz) Mr. Nolan, what position do you have with Liberty Coach?

A. I'm international representative.

Q. And directing your attention to, the election was held by National Labor Relations Board at Liberty Coach October 28, 1966, do you have anything, did they have an organizing campaign?

A. Yes.

Q. Were you in charge of the organizing campaign?

A. Yes.

Q. Tell us whether or not Willis Newby was on any committees?

A. Yes.

Q. What committee is that?

A. Willis Newby was on the organizing committee prior to the election.

134 Q. After the election?

A. Willis Newby continued in the capacity of being a member of the organizational committee until the time that we selected an administrative committee.

Q. Do you recall about when that was?

A. July 27, 1967.

Q. And between the election and the selection of this committee had you had any meetings?

A. Meetings with some members of the organizational committee.

Q. Were these announced meetings by leaflets?

A. What is the period again?

Q. From the time after the election to July of this year. In

other words, from the end of October up until July?

A. Between the election and prior to the membership meeting on July 27th there were no formal meetings of the entire group. We had meetings with the committees.

Q. Mr. Nolan, do you recall the date of the fire?

A. Yes.

Q. When was that?

A. August 30th, 1967.

Q. And do you recall the date that your labor organization sought certification from the National Labor , from the company?

A. The date of the document was August 15, the actual acknowledgement of it wasn't until two days following that, August 17.

135 MR. STIEGLITZ: Would you mark this as General Counsel's Exhibit 14 for identification?

(Thereupon, the document referred to was marked as General Counsel's Exhibit No. 14 for identification.)

Q. I hand you what has been marked as General Counsel's 14 and ask if that appears on your record?

A. Yes, it was.

Q. And was that, do you know the date that that was distributed?

A. This was distributed on July the 26th.

Q. And was there a committee meeting on the 27th?

A. There was a committee meeting on the 26th. It was

a membership meeting on the 27th.

Q. I see. And where was this distributed, if you know?

A. At the plant gates and in the parking lots.

MR. STIEGLITZ: I move for the introduction of General Counsel's 14.

MR. SHEA: No objection, Your Honor.

TRIAL EXAMINER: General Counsel's Exhibit 14 is received.

(Thereupon, General Counsel's Exhibit No. 14, for identification, was received in evidence.)

Q. I show you now General Counsel's Exhibit Number 6 and ask you if you recall the date that that was distributed?

A. That was distributed the week of August the 21st, I assume  
136 it was distributed on the 22nd of August.

Q. Now, I've shown you these two documents, General Counsel's Exhibit Number 6 and General Counsel's Exhibit Number 14, now from a period of July 26, to the time of the fire, which is August 30, were any other leaflets distributed by the union?

A. Not to my knowledge.

Q. Were there any other handbills that was distributed?

A. Not to my knowledge.

Q. Now, going back to the meeting of July 26, 1967, did Willis Newby attend those meetings?

A. We had a committee meeting on July 26, 1967, which

Willis Newby was present, also July 27th, the membership meeting.

Q. Now, going back to the question I asked before on the two handbills that was distributed from a period of time that was July 26, 1967 to August 30th, 1967, I don't know if I recall if I stated the year?

A. I assumed you were speaking of 1967.

\* \* \*

141 MR. LANKER: At this time, Your Honor, General Counsel would like to offer into evidence what has been marked for identification as General Counsel's Exhibit Number 15 together with the stipulation which I will propose may be stipulated between the parties hereto that General Counsel's 15 is a composite which shows the number of persons and the names thereof who missed work during the days Tuesday, Wednesday, Thursday, Friday of the week commencing 9/5 or it is the Tuesday commencing 9/5/67 and that this composite covers all time cards, approximately 200 employees, production maintenance employees at the time indicated on this deposit. There are certain persons who have designations opposite their names, for example, on the first sheet of this composite J. Pensinger has the entry "Watchman" opposite his name and also on another sheet. This indicates that man is obviously a watchman also another explanation is that where the entry appears on the same line of certain persons, the entry

being "Out new hire" this indicates that they were a newly hired employee therefore they should not probably be considered by the Trial Examiner as in the composite. Together with that stipulation on General Counsel's 15.

MR. SHEA: We are stipulating. We are not agreeing to the materiality or relevancy of that I believe is what you wanted.  
142 General Counsel wanted it.

MR. LANKER: That is correct.

TRIAL EXAMINER: General Counsel's 15 is received.

(Thereupon, General Counsel's Exhibit No. 15, for identification, was received in evidence.)

MR. SHEA: General Counsel will get us a copy of this?

MR. LANKER: Yes.

MR. STIEGLITZ: Mark document as General Counsel's Exhibit Number 16 for identification.

(Thereupon, the document referred to was marked as General Counsel's Exhibit No. 16 for identification.)

MR. STIEGLITZ: All right, at this time, Your Honor, is I offer General Counsel's Exhibit Number 16 which/for the convenience of the Trial Examiner which is the official documents pertaining to the R-case, 25-RC-3332 in which the Board on August 15 issued certification to the Charging Party.

TRIAL EXAMINER: Any objections, Mr. Shea?

MR. SHEA: Yes, Your Honor. We object. We wanted

the entire record of the investigation of that proceedings submitted to the Trial Examiner: We have a motion to that effect. Now there were thousands of pages of transcript --

TRIAL EXAMINER: I denied that motion. I'm only interested for purposes of this proceeding so far as my rule is concerned of formal documents which were entered in the certification. I have no authority to overrule the Board's  
143 determination and as I explained when the hearing opened opening the question as to whether this is a complete record for the Court upon review of the purposes of all proceeding can be contested at the time the proceedings are brought into Court.

\* \* \*

(Thereupon, General Counsel's Exhibit No. 16 for identification, was received in evidence.)

\* \* \*

AMOS M. SCHROCK, JR.,

was called as a witness by and on behalf of General Counsel, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Stieglitz)

\* \* \*

144 Q. Now directing your attention to the period of time after the fire, did you have any conversations with Charles Warren about the union and if you did please tellus how it occurred and

what was stated?

A. I had reference with Charles Warren about the union and  
it was about three weeks after the fire. I was on my<sup>way</sup> over to get  
some more carpeting in the main building by the time clock. I  
145 said, "Hello" and I asked him about the union. Charlie said he  
felt that the union would be a good thing in its place but he didn't  
think that he said that Hussey has been in the mobile home  
business too long that he, Charlie, felt that Hussey would do  
something to discourage the committee and employees.

Q. Did he say what committee?

A. The union committee.

Q. Did he ask you anything about the union?

A. Yes.

Q. And what was that?

A. I said I think it would be a good thing at least I would get  
some help.

Q. What if anything did he ask you about it?

A. Pardon?

Q. Did he ask you anything about the union?

A. Yes, he asked me how I felt about the union and I said,  
"I think it would be a good thing."

Q. Now, did you have any further conversations with Mr.  
Warren about the union?

A. Yes.

Q. Do you recall when about that was?

A. November 30th.

Q. Of what year?

A. '67.

Q. Would you please tell us then how this conversation came  
146 about and what was said and what you said?

A. On November 30th at 2:00 break over in the floor building where I lay carpets Charles Warren brought out work orders for the shop and I asked him if I may go to the doctor for a tetanus shot. I injured my finger a month before so I asked him if I may go to the doctor at break time for my tetanus booster shot and he wanted me to wait until 3:30 and I said I had another appointment at 3:30 and he wondered if it was union or something. I said, "The committee's getting together and they just want me to come down" and then he said if I go, if I go to the union committee or the meeting tonight, there wasn't a meeting but the committee came together, he said, "If I go down there I'm the craziest fool that works at Liberty Coach."

\* \* \*

Q. Can you state whether or not there was anything said about literature?

A. Yes.

Q. Would you please tell us what was said?

A. Charlie Warren asked me if the union is sending out some

more literature and I said, "Not that I know of." Then I asked him if Hussey's sending out some more literature and he said not that he knows of.

\* \* \*

147 Q. . Can you state whether or not you were asked about future union meetings?

A. You mean would I attend the union meetings or what?

Q. Were you asked, state whether or not you were asked whether or not there were going to be any other union meetings?

A. No.

MR. STIEGLITZ: No further questions.

#### CROSS EXAMINATION

Q. (By Mr. Shea)

\* \* \*

Q. Did Mr. Warren ever threaten you in any way about joining the union or not joining the union?

A. No.

Q. My understanding is that on August 30th you had a conversation with Mr. Charles Warren and he told you that he thought the union would be a good thing for Liberty?

A. No.

Q. On what date?

A. I would say September 30th, about the Monday after the fire, I mean a month. The fire was August 30th.

Q. All right. On September 30th then Mr. Warren told you

148 he felt the union would be a good a thing for liberty or to the employees it would be a pretty good thing; is that correct?

A. I said it would be a good thing for Liberty Coach.

Q. You mean he didn't say it would be a good thing?

A. No.

Q. Didn't you just testify that Mr. Warren said that it would be a good thing?

A. Well, he asked me about the union and I said that I felt that it would be a good thing.

Q. And you claim he said Mr. Hussey would do something to stop it?

A. Yes.

Q. What did he indicate Mr. Hussey would do?

A. He didn't say. He said, "Hussey has been in the mobile home business too long but Hussey would do something to discourage the committee and employees."

\* \* \*

Q. So from September 30th when this remark that you testified he made there has been nothing that you know of to indicate, give any indication on Mr. Hussey's part to discourage the union; is  
149 that correct?

A. Yes.

Q. Yes, that is correct. Is that the word used, "discourage"?

A. Yes.

Q. But according to you in this conversation that you say that took place Mr. Warren didn't approach you, you approached Mr. Warren; is that correct?

A. We met at the time clocks in the main building. Warren said hello in so many ways but I asked him about the union.

Q. Did Mr. Charles Warren at any time come to you and open discussions up about the union?

A. Not more except on November 30th when I wanted to go get my tetanus booster shot, when I injured the forefinger on my left hand.

Q. Did he suggest that you do that after work?

A. After work.

Q. As I understand you've got a union meeting or something?

A. He wondered if the union committee was getting together and why I had to go and I told him they wanted me to come down and he said if I'd go after 3:30 I'm the craziest fool that works at Liberty Coach.

\* \* \*

150

LARRY GIENGERICH,

was called as a witness by and on behalf of General Counsel, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

\* \* \*

151 Q. (By Mr. Stieglitz) Mr. Giengerich, are you presently employed by Liberty Coach?

A. Yes.

Q. And do you recall when you hired in at Liberty Coach?

A. It was the last of March. I don't know the date or anything.

Q. And did prior to the time -- strike that.

• Did any member of the company come and visit your home about any job?

A. Yes, Ted Auer come over.

Q. And at that time in your home, did you have a conversation with Mr. Auer relating to the union?

A. Yes, we asked him if there was a possible chance about the union coming in and he said, "No, not that he knows of."

Q. Do you recall whether he said anything else?

A. He said something about Hussey's trying to keep it out.

That is all he said.

Q. And was there anyone else present?

A. Wilbur Day was present.

Q. And did he work at Liberty Coach?

A. Yes.

Q. And <sup>where</sup> was this again?

A. At my home.

Q. Now, do you recall when the fire occurred at Liberty Coach?

152 A. Yes, August 30th of this year.

Q. (By Mr. Stieglitz) Now, directing your attention to the period of time after the fire did you have occasion to speak to Mr. Warren? Correction, strike that. Mr. Harold Weaver about the union?

A. Yes.

Q. Could you tell us about how long after the fire it was, who you were with and what was said and so forth?

A. It was approximately two weeks after the fire, more or less. Mr. Hoschstetler and I were, he said he was trying to hire me and he said not to pay any attention to the rumors about the union being in. No other comments was said.

\* \* \*

Q. Can you state whether or not anything was asked you about anyone in the union?

A. Yes.

153 Q. Would you please tell us.

A. Yes. Them guys that were in there and I told him, Graff, and Floyd Rapp and Clyde Campbell, they are on the board on the committee.

Q. And did he say anything in answer to that?

A. No.

Q. Do you recall if anything was said about the summer?

A. They said they had their ups and downs and they hoped it would be a lot better next summer, because of the union this

summer.

Q. And where was this conversation?

A. In Mr. Weaver's office.

MR. STIEGLITZ: No further questions.

CROSS EXAMINATION

Q. (By Mr. Shea) Larry, were you in any way ever threatened by Mr., anybody in management at Liberty?

A. No.

Q. And have you, do you know of anything around Liberty that indicates that any man there has to be worried on account of management attitude towards the union?

A. No.

Q. Do you men around Liberty freely discuss the union on the job?

A. Yes. In fact alot.

Q. But there is free flow and nobody cuts it off and nobody is worried; is that correct?

154 A. Yes.

\* \* \*

157 MR. STIEGLITZ: On the basis of stipulation of the parties, General Counsel proposes the following stipulations: number 1; that Lloyd Frank Ringler did not work from the period of August 9th, 1967, to October 9th, 1967, and he was on sick leave during period as a result of a hernia operation which caused

him to claim occupational injury. Do you stipulate to that?

MR. SHEA: Yes.

MR. STIEGLITZ: Number 2; Eli Yutze left the company on February 17th, 1967, and returned 8/14/1967.

MR. SHEA: 8/14, that is correct.

MR. STIEGLITZ: That Elden Kemp hired on September 5, 1967, was hired by the company.

MR. SHEA: That's agreed.

MR. STIEGLITZ: And Larry Yoder was hired on September 5, 1967.

MR. SHEA: When you say hired you mean that was his first day of work?

also  
TRIAL EXAMINER: Just stipulate that that was his first day of work.

MR. STIEGLITZ: We'll stipulate to that. Stipulate that he was hired that day.

MR. SHEA: I don't know particularly what day they were  
158 hired. We'll agree with it.

TRIAL EXAMINER: Mr. Yoder testified to this did he not?

MR. STIEGLITZ: No, this is another Yoder, Larry Yoder. But, John, was he hired on those days.

MR. JOHN SHEA: Yes, we'll stipulate to that.

MR. STIEGLITZ: And that Don Wolferman did not work the week of September 5, September week-end, September 10, which

I'm sure of. And that Garry Baker did not work on 9/5, 9/6, 9/7, or 9/9, or any work on Friday, 9/8. Would you stipulate to that?

MR. JOHN SHEA: We'll stipulate to that.

MR. STIEGLITZ: That Ben Ray Yoder worked the week of September 10th, Tuesday, Wednesday, Thursday, Friday, Saturday, which is 9/5 to 9/9.

TRIAL EXAMINER: Is that stipulated?

MR. SHEA: Yes.

MR. STIEGLITZ: And Wilbur Day was hired on September 7, 1967.

MR. JOHN SHEA: We'll stipulate to that.

\* \* \*

LONNIE SPENCER,

159 was called as a witness by and on behalf of General Counsel, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

\* \* \*

Q. (By Mr. Stieglitz) Mr. Spencer, are you presently employed by Liberty Coach?

A. Yes.

Q. Do you recall how long you've been working there?

A. I've been working there 11 years this coming January.

Q. And where are you presently employed, what section?

A. At this time on tops.

Q. And whose your foreman there?

A. Ralph Roberts.

Q. Now, directing your attention to the last two years of your employment at Liberty Coach, have there been any times during the last year, two years, when you have been absent without notification to the company?

A. Talk a little louder. I'm having trouble trying to understand.

Q. During the last two years that you have been employed by the company, have there been any times when you have been absent from work without calling in?

A. Some few days, yes. I've had some sickness in my family.

160 My wife has been ill for I'd say twelve months, been in the hospital twice I think last year, and so I've lost a little time with her and I've been sick some myself.

Q. And in these times had you called in to the company?

A. Never had to make a phone call in my life to the company. Nobody told me that I was going to have to, nobody told me and I didn't see it on the board or nothing to that effect so I always made preparations with my foreman in case she was sick in case I wouldn't come in. If I was sick or my family was sick, they would come first. I'd take care of them and then he would know what was wrong when I didn't come in.

Q. Now, let's go to the summer of 1966. You missed, state whether or not you missed any work in 1966 in the summer?

A. Well, I wouldn't say for sure. I don't know. I could have missed a day or two, I don't know.

Q. Now state whether or not you missed any work without calling in to the company?

A. It's like I told you, everytime I have never called in. Never made a phone call, but I have told my foreman and I told him time and time after time caused I stayed out on account of sickness and he said it would be all right.

Q. Did your wife take a vacation in the summer of 1966?

A. My wife, yes, we took a vacation.

Q. Did you miss any work as a result of that?

A. I think I missed two days.

161 Q. Did you call in then?

A. No, sir. But I told the men before I left that I might take off and go south two days.

Q. Is there<sup>any</sup>/instances that you overslept?

A. One morning I know of, no more.

Q. When was that?

A. Not, that was not very long back. A few weeks back.

Q. Did you call in?

A. No, sir, I didn't.

Q. Were you criticized, were you ever reprimanded for that?

A. I was criticized. I was called to the office and they talked to me about it, yes.

Q. Who talked to you?

A. Mr. Charles Warren.

Q. What did he say?

A. He told me it was against the rules to stay out late without calling in. It was a rule to call in. I told him nobody ever told me to call in and I never seen it posted and I didn't know it was. I've been having some trouble myself, been affected in my head, and I had to go to the doctor so my wife had been in bad shape too, in the last month. She is in the hospital.

\* \* \*

167 MR. STIEGLITZ: We have no further witnesses and we rest.  
We would also like to move to conform the pleadings to the proof.

168 TRIAL EXAMINER: Motion is granted.

\* \* \*

169 EVERETT HUSSEY,  
was called as a witness by and on behalf of the Respondent,  
after having been previously sworn, was examined and testified  
further as follows:

## DIRECT EXAMINATION

Q. (By Mr. Shea)

\* \* \*

172 Q. August 1, 1960. Now, Mr. Hussey, in the period you were at Liberty Coach, to your knowledge have you in any way attempted or direct the people to attempt to interfere with any union activities?

A. No, I've tried to go completely the other way, to be completely opposite.

Q. All right. Speaking now specifically in this past election that is the subject matter of this controversy in part, prior to the election did you send out any bulletins or any pamphlets or any propaganda of any nature to any employee concerning the union?

A. No.

Q. Did you talk to any employees concerning the union?

A. No.

Q. Did you have any instructions to your people, your other supervision, as to whether they should or should not talk to any people concerning the union?

A. They were all instructed not to talk about it period.

Q. Going up to this fire that has been talked about, so far as your direction -- strike that -- so far as your directions to your employees that you gave out prior to the election in 1966, have

you ever changed those instructions?

A. No.

Q. They are the same requirements now; is that correct?

173 A. Yes.

Q. As you had, I'll direct your attention to the fire that occurred, what was the day of the fire again?

A. August 30th, 1967.

Q. All right. What was the condition of your company at the time of that fire, so far as production is concerned?

A. Well, we needed production very badly. We had a large back log of orders. We had just gotten back from the Elkhart show, mobile home show, where we display our coaches, mobile homes, and take orders and we needed production very badly in order to supply those dealers quickly. We got a trailing off of orders in October and we had to get them off to them as soon as possible so they are offered for display and so we resell those and take orders from them and that helps our production.

Q. As far as the orders were on hand, say at the time of the fire, do you have any particular type of experience with on hand orders and early in the fall, if they are not produced?

A. If they are not produced we lose them. They buy other stuff so it gets out there and gets displayed on the dealers lots and those get cancelled and we also don't get the reorders

because we don't have the merchandise displayed on the dealers lots.

Q. All right. Let's take as of August 30th, 1965, in the fall of '65, '66 also, did you have any experience with cancellations  
174 in the fall of '66?

A. Yes, we had fairly heavy cancellations in September in that fall.

Q. These were orders that were lost. Why were they lost?

A. Well, because we weren't getting out the production.

Q. They got too low and that was the end of it?

A. Yes.

Q. All right. Going into the August 30th, '67, what was your condition then?

A. Well, we had the problem of getting, had the same problem of getting the merchandise produced. We had a heavy back loss and we desperately needed to get that production out.

Q. Can you explain, let me ask you this, does this, the cancellation of orders, affect your employment problems at all?

A. Yes, it will because we don't get the orders, we lose the business, we don't get the orders out there, we lose business, we lose winter business, it affects our employment problem. We don't use people if we don't keep many employed there and if we don't keep that production up our rates go down.

Q. Why do your rates go down?

A. We have a bonus program that is based on production.

Q. I see. With that background in mind, would you explain the fire, its nature, its size, how it affected production?

A. Well, this is a catastrophe to us really, it's been my  
175 experience this fire flared up. It took the entire area of our assembly operation for cabinets, it took our paint shop, it knocked out the mill, it knocked out all the wiring in that building, all the boxes coming in, all the main wiring coming in to that building and --

Q. How many total square feet up and down would be involved there, the buildings that were knocked out?

A. I believe there was about 16, 18,000 square feet in that building.

Q. Now, was there production going out of those buildings?

A. Yes, we have our mill for our cabinet work, our assembly operations for all of our cabinet work and our paint shops for the cabinet work and then we have our metal working line where we take coiled aluminum and form it into sheeting for the side of our coaches. Also, we have our expandable wall where we make our expandable units in this building.

Q. Was this right into the production itself so to knock this out it is going to affect your rush line?

A. Yes, the cabinets have to be built in the coaches as they

are going down the production line.

Q. And how long would it take before something like this occurs? How long does it take to affect your cabinet line on your production line?

A. Well, we bring the cabinets after they are fully painted and everything from that building over to the side of the line  
176 where those are installed and as soon as we run out what is over along side of the line will be, we have no more cabinets to install. They have to come from the cabinet shop. We had very few over there at that point when we had the fire. We changed a little bit, we kept a bank of them a little ahead over there but we needed that space open there for other things.

Q. You might have cabinets for one or two days possibly?

A. We only had I think, just a very few sets. It seems to me it was three or four sets or something like that. Some of them  
were  
I don't even think those/complete. We may have had parts or pieces in to certain cabinets of other sets for the coaches ahead but we didn't have any complete sets. We had about three or four is about all we had at that time.

Q. When did you hear about the fire?

A. Our purchasing agent came running in to my office and said we had a fire down in the paint shops and I immediately ran down there and the fire was well along at that time.

Q. Did you see the flames?

A: Oh, yes, the flames were coming out of the paint shop.

\* \* \*

178 Q. Was the cabinet shop operatable at that point at all?

A. No.

Q. All right. What did you do then?

A. Well, as soon as we got the thing under control we got some men, after the fire was out upstairs and still smoldering, the area to the south of the paint shops that we immediately got up there and started shoveling the debris down off the side. Leaving that evening, we worked late shoveling alot of the debris down in the shop area off the second floor to get that cleared off and we worked late that evening with some men particularly from that area.

Q. Were you there that evening?

A. Yes, I was there until, the men I think most of them left about midnight I believe as best as I recall. Maybe one o'clock, 11:30, or something around in there. We had lights up there. It was a little too dangerous to work but we had several piled<sup>up</sup> and that continued to smolder and flare up and we kept hoses right there, people with hoses.

Q. How long did you stay there?

A. Oh, I stayed there until about 2:00 o'clock I guess.

Q. And then -- a. m. or p. m. ?

A. A. m.

179 Q. Did you talk to your employees?

A. Yes, I called them together at about 3:00 o'clock, I believe, and this was after the fire had gotten under control and we had the thing dampened down pretty well by that time and I had a chance, snuck in to the mill and it looked like we had our machines there. We checked a couple of the machines that were in there and there was very little damage done to the machine itself. Fortunately they had a big rubber floor over this mill area and the machines did not themselves get water damage. We only ended up with one that we had to dry out. Then I called the men together and told them that we would try to get back in production by Friday. We'd make every effort to get back in there but with some reservation about whether we could do it but I told them that the cabinet people, everybody in that area, would completely work over the week-end. Labor Day was coming up so we would work Saturday, Sunday, Friday, Saturday, Sunday, Labor Day and get all of our cabinets back to start production on Tuesday.

Q.. Did you actually have them building cabinets over the week-end?

\* \* \*

181 Q. Did you tell them then the number of hours they were going to work on Tuesday, Wednesday, Thursday and Friday?

A. Yes, and I talked to them and I think our schedule on

the following week, we'd best be back in there at 7:00 o'clock on Tuesday morning and we would work nine hours a day, Tuesday, Wednesday, Thursday, Friday, and Saturday.

Q. Now, did you continue to work over the week-end too?

A. I was there completely throughout the week-end.

Q. And what happened Tuesday morning when you went in to work?

A. Well, I had been down there over the week-end and we were working on getting the cabinets back in the line and I was concerned of course, we'd been off since Wednesday and concerned whether all the men would be back, if there had been any problems in the men coming back and so I went out about 10:00 o'clock, 10:30 in the morning to check with Charlie Warren as to he had off and he had the listing of the men who were not  
182 there and certain ones who had told him he wouldn't be in who had prior notice that some of them wouldn't be in. There were two of them on jury duty but I may make a mistake on that and --

Q. Mr. Ringler had been out with a hernia operation?

A. Mr. Ringler had a hernia operation. There were others on the list but there were two that hadn't called in and the men we had expected in and to me after all of the men at work, all these hours, had worked all these hours, I was very deeply disturbed these men down in the cabinet shop. Everybody working, working on clean up and everybody just worked their hearts out

on this thing and to me to have two fellows that don't have any more interest in this thing, don't call in, don't come around and find out, they don't do anything about it. And they had been explicitly told to be back on Tuesday morning, to me that was a complete lack of consideration for the company and other people in the company and other employees and all these people that had worked their hearts out and I guarantee you I didn't have union activity or anything else in that area, had absolutely nothing to do with this decision. That was the furthest thing from my mind. My problem was to get that plant back in production.

We had turned that line, we had taken after this windows, we had taken then to use further down the line. We had finished them off on Thursday and Friday in order to get them off to dealers so that really we were, our production line, was practically drained from about the roof and window section down on and we had to get that  
183 thing going to get our production rolling again from that area on.

But I'll say it again, I had absolutely no thought in my mind in any way shape or form about union activities by anybody, identified nobody with the union at that point. I was very tired, we had worked those long hours and to me when somebody doesn't have any more concern than that for our problem of getting back in production I don't feel it was proper at all.

Q. Had you ever, had you at any time in the past or recent past yourself talked to men in any connection about attendance or anything of that nature?

A. Yes, in July I gave a talk out there. I introduced Charlie Warren who is our new plant superintendent, now he took over as plant superintendent on August 1, but he and Ted Auer as plant superintendent continued to work together from the time we came back from vacation Mr. Warren worked half days mostly in July although he worked a few full days too. He worked half day and concluded some mobile homes he was building and finished one off and he had a couple finished off so his schedule was alternated between that and our plant for those last three weeks of July but I did give, I believe it was the first day back after vacation I called the men together and introduced Mr. Warren and I went over a lot of things at that point and one of the points I made very specifically, I talked about hours and when they were to leave the job and go back to the job, wait for the warning buzzer before coffee breaks and before lunch period and I talked about calling in, attendance, they were to be in there by 7:00 o'clock, they were to call in, I remember using the words, "It's not grand central station, we've got to have these people be in here on time and if they are not going to be in here to inform us what their problems are." I told them we'd be very considerate in that area but if there were any problems at home, personal problems, sickness, that type of thing that they were to call in and inform us first thing in the morning or send word to us with other people.

Q. With reference going back again, you got names of people

and there were two of them on there; is that correct?

A. There were only, the names the day after the fire.

Q. Tuesday after the fire?

A. Charlie Warren had a list of the names. He had gotten them, I believe from all of the clocks and determined who was missing and to the best of our knowledge, the only two that had not sent in were the Willis Newby and Yoder and I said, I called him at that time, told him at that time to pull their cards.

Q. Which Yoder is that, do you recall?

A. I believe that <sup>was</sup> Amos Yoder.

Q. Did you have any knowledge, do you know of any knowledge that the company had that Amos Yoder did not intend to come back?

A. No.

Q. From the prior week?

A. No. Mr. Warren had no knowledge of it and I had no knowledge of it. As far as I know, none of us had no knowledge of it.

185 Q. So you had these two people then you had Mr. Newby; is that correct?

A. Yes.

Q. Mr. Yoder. So what did you do at that point?

A. I told Charlie Warren to pull their cards.

Q. Do you normally go down and tell anybody to pull cards?

A. No.

Q. Why did you do it that particular day?

A. Because I was very concerned about attendance that day because of the situation of the fire and extreme need to get to get mobile homes out to our dealers. We'd lost several days of production and I wanted desperately to get those coaches to our dealers. We had a situation where we have a month or six weeks or so to get those coaches and if we don't get them going it just hurts our winter business.

Q. Were the cards pulled?

A. Yes, they were pulled.

Q. And what else happened concerning these two men that day?

A. Well, I have been told that Mr. Newby called in and after talking, apparently to talk to the operator first and then talk to Mr. Charlie Warren and Mr. Warren told him that he was no longer employed with the Liberty Coach Company. Oh, I believe he asked him why he hadn't called in to begin with and Mr. Newby said something about his phone being out of order and no, he said first, excuse me, he said at first that he had expected to be called.

186 And then I believe Charlie Warren talked me again and the second time he talked to me he told me his phone had been out of order. And then the next morning he was in/lobby, I came through the lobby and I believe Mr. Newby was in the lobby when I came through, that he wanted to talk to I believe he talked to Mr. Weaver that day. I think he talked to Mr. Warren the next morning, this is the following morning, Wednesday morning, he talked.

to Mr. Weaver and Mr. Warren and at that time he said that he had been sick. I think he told Mr. Weaver that he had been sick yesterday and even at that point we had three different reasons why he hadn't reported in on Tuesday morning.

\* \* \*

187

## CROSS EXAMINATION

Q. (By Mr. Stieglitz) Mr. Hussey, you gave an affidavit to the National Labor Relations Board; is that correct?

A. Yes.

Q. And isn't it true that in that affidavit you personally stated that you yourself personally pulled the time cards at 10:30?

A. No, I said that I pulled the time cards and that is a broad statement. In fact, I stood there and told Charlie Warren to pull those, pull the time cards.

Q. Let me ask you whether or not you said these words in your statement several instances here outside the company; paragraph 9, second sentence: "I waited until 10:30, three and one half hours after starting time and when no word had been received I pulled both of their time cards." Did you make that statement; in your affidavit?

188 A. Yes.

Q. Now, let me read again further on in paragraph 9: "Amos Yoder and Willis Newby met that definition and I pulled their cards personally just before 10:30 on Tuesday morning." Did

you make that statement?

A. Yes.

\* \* \*

191

CHARLES HANSON WARREN,

was called as a witness by and on behalf of the Respondent,  
after having first been duly sworn, was examined and testified  
as follows:

DIRECT EXAMINATION

Q. (By Mr. Shea)

\* \* \*

Q. And where are you employed?

A. Liberty Coach Company.

\* \* \*

Q. In what capacity sir?

A. Plant superintendent.

\* \* \*

192 Q. When you came to Liberty Coach Company, did that company  
have published rule books?

A. No.

Q. How were instructions and regulations published, or gotten  
out to the people?

A. By talks by Mr. Hussey and word of mouth and by me  
instructions.

Q. Was there any system of warnings, written warnings, in

effect when you got there?

A. Not as such, no. There is some, yes.

Q. Occasional one that you filed in the history?

A. Right.

Q. Very rare?

A. Very rare.

Q. Can you recall sometime in the latter part of July or August Mr. Hussey giving any instruction talk to the employees?

A. I certainly do. Soon after I got there.

Q. Would you tell the Board what you heard in that connection?

A. Amongst other things, I remember he said this grand  
to  
central station has/stop, this coming and going without permission  
and not phoning in and so on and so forth and he noted very clearly  
that if you was off sick, late, or anything, be sure and phone in  
as soon as possible.

Q. How do they have to communicate to you that they are going  
193 to be out?

A. Get it to me somehow.

Q. How about prior arrangements?

A. Prior arrangements, yes.

Q. Now, do you find that Liberty Coach, that this has been  
a rule since you've been there in your experience that people  
are to follow this course?

A. Yes.

Q. Do you find that that rule has been honored by most of your help?

A. Yes.

Q. Do you recall the fire?

A. Yes.

Q. The day of the fire?

A. Yes.

Q. What's the date?

A. The date? No, I don't recall the date.

Q. Do you recall the day?

A. Yes, I remember the day.

Q. All right. That's August the 30th, 1967, do you recall Mr. Hussey giving any directions or instructions to employees on that day?

A. Yes.

Q. What were those instructions or directions?

A. Since the fire quieted down and before --

194 Q. As soon as the fire quieted down?

A. He gave a talk on what his intentions were and he said definitely that we would go back to work right after Labor Day.

Q. Which would be Tuesday the 5th?

A. Yes.

Q. And in that connection did he say how many hours you'd work that day?

A. Nine.

Q. How about the next day?

A. Nine.

Q. How about the next day?

A. Nine.

Q. How about the next day?

A. Nine.

Q. Does that week include Saturday?

A. It includes Saturday.

Q. Now, had you, as far as your job as superintendent is concerned, problems because you don't have enough problems that comes under good direction or assignment of the people, comes under your purview or jurisdiction?

A. Yes.

Q. Had you had problems of that nature, having enough people?

A. We have problems every day like that. We had had.

Q. A large turnover?

A. Yes.

195 Q. And you normally have people coming in very often and hiring and reporting for duty?

A. You mean new people?

Q. Yes.

A. Yes.

Q. And do you often have a number of vacancies for those

people?

A. Yes.

Q. And on the date of the, how many people are normally in your, the people that work on the roofs?

A. We try to keep six there.

Q. Why wouldn't you have six if you didn't have six?

A. Be absent or maybe one thing or another. If they are sick or they quit or something.

Q. But the normal requirement is six?

A. Yes.

Q. Now, on the, did you have any knowledge of a Mr. Yoder, do you recall Mr. Amos Yoder?

A. Yes.

Q. Wheredid he work?

A. He worked on the roof.

Q. All right. Let's take the week of the fire. Did you have any knowledge that he wasn't going to work the next week?

A. No.

Q. Did you get any reports of that nature from anyone?

196 A. No, no one.

Q. When you came to work Tuesday did you expect or not expect to see Amos Yoder there?

A. I expected to see him there.

\* \* \*

Q. How many did you actually have on the roof crew on that Tuesday morning, how many were there?

A. Well, there was three.

Q. So instead of having the number six you had three; is that correct?

A. Right.

Q. What did you do to accomodate that situation?

197 A. Well, we were a little short there for awhile, finally we got somebody up there. <sup>I</sup> One/think extra, but we were still short.

Q. Could it have been a newly hired man?

A. It could have been.

Q. Was that day a very heavy day for you?

A. A real heavy day. Of course right after five days of a lot going on there is a lot in getting started again.

Q. Was it an unusual day?

A. Yes, I would say so. Very much unusual.

Q. What happened during, take Willis Newby, was he present?

A. No.

Q. Did you have any knowledge that Mr. Newby was going to be off?

A. No.

Q. Did you receive any information, Mr. Newby as I understand, Mr. Yoder as I understand, were not there on the Tuesday of the

5th?

A. No.

Q. Have you heard from Mr. Yoder or Mr. Newby on the day of the 5th in the morning on the starting time that they were not going to be there?

A. No.

Q. Did anybody come in and tell you this?

A. No.

198 Q. Did you have any conversations with Mr. Hussey at any time on the 4th concerning people who were absent?

A. Yes.

Q. Do you know approximately when you had those conversations?

A. Around 10:30. Around 10:00, 10:30.

Q. And where did you have those conversations?

A. It was in the shop, pretty close to the time clock.

Q. And what were those conversations?

A. Well, Mr. Hussey told me to pull the two cards that were absent without notice.

Q. Did he ask you anything before that as to who was absent?

A. Yes.

Q. What did you tell him?

A. I told him who was absent.

Q. Do you know approximately how many people were absent that day?

A. No, these two kind of sticking in mind. I don't know how many. I think practically everybody was there but these.

\* \* \*

199 Q. Now, had you gotten information from your foreman as to who was absent or checked the clocks yourself?

A. Right, I checked and I got information from foreman too.

Q. Did you have a satisfactory reason to yourself as to everybody but the two?

A. Yes.

Q. So far as your prior arrangements and call in?

A. Yes.

Q. What did you tell Mr. Hussey then in that connection?

A. I asked him for instructions and he told me to pull the two cards.

\* \* \*

201 Q. Would you tell the Court your experience in that regard?

A. I talked to Mr. Newby on the phone and I said, "What's the matter," and he said, I said, "How's come you're not to work?", and he said, "Well, I didn't get the message right, I didn't understand." And I said, "Well, it's funny that you didn't get the message right and everybody else got Mr. Hussey's instructions correct." And then that was all to that conversation.

Q. Did you tell him at that time that he'd been released?

A. Yes.

202 Q. Had he called you or had you called him?

A. I called him.

Q. Why did you call him?

A. I was desperate for a roof crew, really, for one thing and I was wandering.

\* \* \*

204 TRIAL EXAMINER: You did speak to Mr. Newby that Tuesday?

THE WITNESS: I talked to Mr. Newby that Tuesday.

TRIAL EXAMINER: Would you tell me again what was said in your conversation, what Mr. Newby said to you?

THE WITNESS: Yes. I asked Mr. Newby, how's come he didn't come to work and he said, "I didn't think we was supposed to come to work today.", and I said, "Well, Mr. Hussey made the talk and was very emphatic that we were to work Tuesday." He said, "Well, I didn't understand the message that way." And I said, "Well, most everybody else, well, everybody else didn't understand it that way because they are either in or accounted for."

TRIAL EXAMINER: Was anything else said?

THE WITNESS: No, I don't think so.

Q. (By Mr. Shea) How about, did you have any subsequent, you say everybody else was in and accounted for, in or accounted for. You had one other employee?

A. Yoder, Amos Yoder.

Q. What about, did you talk to him at any other time concerning his absence on the 5th?

A. I believe I talked to him when he came in. He came in to see Mr. Weaver. I believed I talked to him a second time that day. He called me I think, yes.

Q. Do you know what was said at that time?

A. Well, he told me he couldn't he said he needed the job and  
205 I said, "Well, I'm sorry Mr. Newby. We don't have anything. You're terminated." He said, "Well, I " I talked to Mr. Newby three times. Now, that time he had told me he was sick or his phone was out of order in the morning. And then the next time I talked to Mr. Newby he told me one or the other, either he was sick or his phone was out of order. In other words, I talked to him three times.

Q. Two on that day, and what about the third time?

A. Well, that's the time that he either told me he was sick or his phone was out of order. The first time he told me he didn't get the message.

Q. The second or third time he called you he told you his phone was out of order and the other time he said he was sick?

A. Right. He gave me three answers. I do remember the first one but I don't really remember which was the other two.

205 Q. All right. In connection with your employment at Liberty Coach as plant superintendent, did you ever on any occasion tell any of the employees in your recollection or knowledge that they'd be crazy to go to a union meeting?

A. No.

Q. Do you have any recollection of any conversations of that nature?

A. No.

Q. Did you ever question employees on who was anywhere as far as meetings were concerned, who was a union member?

A. No. We really wouldn't have to question anybody to know.

Q. Why?

A. That's all a lot of them talked about.

Q. Is there free discussion at Liberty by union people?

A. Very free.

Q. In other words, they made no bones who they are or conversations or anything of that nature?

A. No.

Q. Have you ever sought to find<sup>out</sup> information of that nature for  
206 any purpose?

A. No.

Q. Have you ever had employees come up to you and question you about the union?

A. I've had them come up and tell me stories and I'll have to listen to them a little bit and I say okay, it's none of my business and I tell them to go on back to work either way.

Q. Either way whether its union or non-union?

A. Right.

Q. One other thing, Mr. Hussey, on the day, that Monday, were you aware of Mr. Hussey's activities from the time of the fire until Tuesday morning?

A. You mean what he was doing?

Q. Yes.

A. Yes.

Q. What was he doing?

A. He was helping out where ever he could, going here and there and helping even remove stuff, clean-up, and so on.

Q. He was doing physical work too?

A. Yes.

Q. Did you notice anything particular about him on Monday morning physically, or Tuesday morning physically?

A. He had problems with his back, yes.

Q. Does he have that occasionally?

A. He has that occasionally. In fact he was in pretty bad shape.

\* \* \*

#### CROSS EXAMINATION

207 Q. (By Mr. Lanker) Do you call Mr. Amos Yoder on

September 5th, 1967, did you call him?

A. No.

Q. But you did call this other man?

A. Right.

Q. The reason you <sup>didn't</sup> call Mr. Amos Yoder is because you did know he wasn't going to be in, didn't you?

A. No.

Q. Why didn't you call him then, sir? You testified didn't you that, to the Trial Examiner at this proceeding that you needed a man on the roofing crew; isn't that your testimony?

A. Right.

Q. And Mr. Amos Yoder is on the roofing crew; is he not?

A. Yes.

Q. And you knew that?

A. Yes.

Q. And you made no attempt to contact him did you?

A. No.

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[Caption Omitted in Printing]

MOTION TO CORRECT RECORD

Comes now Albert N. Stieglitz, Counsel for the General Counsel and moves that the record be corrected in the following particulars:

<u>I.</u>	<u>PAGE</u>	<u>LINE</u>	<u>DELETE</u>	<u>ADD IN PLACE THEREOF</u>
	7	11	60	6(d)
	7	13	60	6(d)
	7	24	in	of
	7	24	attempt	intent
	9	24	600	6(d)
	10	10	unit	union
	10	11	25	2(5)
	10	11	Charles	Karl
	10	12	211	2(11)
	10	14	211	2(11)
	10	21	Charles	Karl
	11	22	on	until
	11	25	Newby	Hoover
	13	20	points	cases
	13	23	16	160
	14	18	120	128
	23	22	Alden	Eldon
	30	12	September	August
	35	9	employer	employee
	40	2	Card	clock
	40	4	block	clock
	92	7	discriminati on	hostility
	94	13	Elden Kemp	Ray Chupp
	96	7	moving	composition of the roof crew is
	97	24	for	with
	100	13	2	10
	103	8	Chuck's	Chupp's
	103	20	asked	absent and failed

<u>PAGE</u>	<u>LINE</u>	<u>DELETE</u>	<u>ADD IN PLACE THEREOF</u>
113	22	Chuck	Chupp
115	11	Onishman	Amishman
121	8	card	clock
122	3	September	August
122	12	Ralph Rapp	Ray Chupp
122	13	Elden Kemp	Eli Yutze
122	25	Chuck	Chupp
123	1	Chuck	Chupp
125	21	Chuck's	Chupp's
125	22	Chuck's	Chupp's
129	3	Mill	metal
142	16	Certain cases	certification
153	2	they	I
153	2	Griffin	Graff
155	10	them	him
155	18	store	doors
164	23	accumulative	cumulative
166	6	Brever	Brewer
166	21	Brever	Brewer
167	14	while	that
188	3	made no	met that
196	5	Chuck	Chupp
207	5	recall	call
210	18	Northwestern	North Webster
211	11	maxial	manual

- II. 1. Page 25, Line 16; insert "until" after the word "in"
2. Page 27, line 8; add "committee" after the word "organization"
3. Page 40, line 2; after the word "other" insert the words "roof crew"; and strike the word "were"
4. Page 43, line 24; after the word "and" insert "Auer came up to me"

5. Page 46, line 5; after the word "plant" insert "the next day"
6. Page 55, line 18; after the word "replacement" add "for me"
7. Page 57, line 19; after the word "had" insert "been"
8. Page 60, line 3; strike "your 19, of"
9. Page 87, lines 19-20; strike "you had no missed absences at work" and substitute in place thereof, "did you have any missed absences from work"
10. Page 93, line 20; after the word "year" insert "from January 1, 1967 to"
11. Page 95, lines 14-15; strike "you say you haven't employed anybody in the cabinet shop?" and insert in place thereof, "did Ray Chupp leave the Company's employ"
12. Page 109, line 23; after the word "for" insert "a union is"
13. Page 113, lines 12-13; after the word "paycheck" strike "and the lady upstairs brought it down; I told him to tell Hoover that I wasn't; that I was leaving so I left"; And insert in place thereof the following: "I tried to get to Karl Hoover, my foreman. He was upstairs in the paint room. I started up the stairs and a man stopped me and told me I could not go up there because they were tearing it down because of the fire; He asked me what I wanted and I told him I wanted Hoover because I was quitting. He told me I could not go up there so I told him to tell Hoover I was quitting"
14. Page 117, line 19; after the word "see" insert "me"
15. Page 137, line 17; after the word "the" strike; "Company's going to file" and insert in place thereof "Company had knowledge of"
16. Page 145, lines 1-3;
  - (a) Line 1; insert "I" after the word "Charlie" and change the word "he" to "I"
  - (b) Line 2; delete word "Think" and add in place thereof the word "Thing"
17. Page 152, line 18; delete the word "rules" and add in place thereof the word "rumors"
18. Page 152, line 19; insert after the word "union" the words "being in"
19. Page 153, line 2; after the word "guys" insert "that"

20. Page 167, lines 24-25; strike lines 24 and 25 and insert in place thereof the following: "Mr. Stieglitz: We have no further witnesses and we rest. We would also like to move to conform the pleadings to the proof"
21. Page 211, line 6; strike "calling in through their office;" and insert in place thereof "calling their office through phones not on that party line."

DATED AT Indianapolis, Indiana, this 23rd day of January, 1968

[Subscription Omitted in Printing]

[Certificate of Service Omitted in Printing]

[Caption Omitted in Printing]

[LIBERTY COACH COMPANY'S]

MOTION TO FIND THAT THE TRANSCRIPT IS PATENTLY  
ERRONEOUS AND UNINTELLIGIBLE AND UNRELIABLE AND  
TO MAKE THE FOLLOWING CHANGES IN SAID TRANSCRIPT

\* \* \* \* \*

<u>Transcript</u> <u>Page No.</u>	<u>Line No.</u>	<u>Correction</u>
		* * *
143	1, 2, 3, 4	In referring to when the hearing opened, references to the statements and explanations of the Trial Examiner the beginning of the hearing that he would not receive evidence bearing on the representation issues, were omitted in the transcript by error on the part of the reporter.

\* \* \* \* \*

General Counsel has filed a Motion to correct the record. To the extent his proposed changes differ from or are not included above, objection is made to them. As an example, General Counsel would change the testi-

mony on page 145, line 1, which was reported correctly. Mr. Schrock changed that testimony on page 148. But Respondent's counsel heard it correctly and said then two pages later: "All right, on September 30 when Mr. Warren told you he felt the union would be a good thing"; "You mean he didn't say it was a good thing"; "Didn't you just testify it would be a good thing". Would the Trial Examiner and Mr. Stieglitz allow Counsel to misquote testimony on two successive pages without saying anything (T.R. 147-148). Further, on page 147, lines 18-20, 23-24, this testimony was repeated. Further Mr. Schrock on page 148 says Mr. Warren asked him about the union (lines 8 and 9) but Schrock testifies to the contrary. (T.R. 145, lines 1-3 and T.R. 149, lines 8-9) Mr. Schrock's testimony is contradictory in every respect, and it was so when he gave it. The fact is that the entire Transcript is patently and completely unreliable and its validity is so impeached that the parties in fact had a hearing without a reporter, and this should be the finding of the Hearing Examiner.

One glaring correction that must be made involves lines 11-13 on page 113. Absolutely nothing was said of a paycheck or a lady upstairs, only that Mr. Amos C. Yoder came in to pick up his tools and to tell Mr. Hoover he was leaving. Where the reporter dreamed up the other matter no one including Counsel for General Counsel knows. These three lines as corrected should read: "Went in and got my tools and to tell Hoover I was quitting. I tried to get to Karl Hoover, my foreman. He was upstairs in the paint room. I started up the stairs and a man stopped me and told me I could not go up there because they were tearing it down because of the fire; He asked me what I wanted and I told him I wanted Hoover because I was quitting. He told

me I could not go up there so I told him to tell Hoover I was quitting."

WHEREFORE it is prayed that this Motion be granted.

[Subscription Omitted in Printing]

[GENERAL COUNSEL'S EXHIBIT No. 3]



# LIBERTY COACH COMPANY, Inc.

SYRACUSE, INDIANA

P. O. Box 608

Phone 219-457-3121

August 25, 1967

Dear Mr. Waldbeser:

This letter is to assure you and your family that Liberty does not recognize and will not bargain with the labor organization presently making pass outs to Liberty employees.

Liberty will not do so because this organization never had a majority of Liberty employees as members and doesn't. Further as president of this Company, I don't intend to bargain with an organization that came into our plant, abused production by slow down on the part of a few misled employees so as to rob you of your bonus and then used the situation it created to maliciously and falsely accuse Liberty and myself of "manipulating" the bonus.

It followed this effort with other vicious propaganda based on falsehoods in an effort to confuse an election.

Why didn't it choose to come to Liberty and fairly participate in a Democratic election. Because it knew it could not win fairly at Liberty. Right now in desperation it is attempting to obtain your membership by convincing you that its "in" at Liberty.

Don't be fooled and don't let it fool your friends.

This case will be heard by a court and I intend to respectfully press your cause and Liberty's cause before the proper courts and I have absolutely no fear of the outcome of the proceedings so why should you.

Do your job and ignore the efforts to worry you or to mislead you or your friends into the belief that this organization is representing "you".

It isn't. . . and it doesn't have a right to. I haven't talked to it and I will not. We will proceed to obtain a hearing in the courts.

I would appreciate the confidence of you and your family.

Best regards,

*Ed. Hursey*



[GENERAL COUNSEL'S EXHIBIT No. 4]



## LIBERTY COACH COMPANY, Inc.

SYRACUSE, INDIANA

P. O. Box 608

Phone 219-457-3121

October 9, 1967

To Liberty Employees:

Desperate men do and say desperate things. While Ted Nolan was not around in 1960, when we were all striving to turn this company around and make it a leader in this industry, Nolan is now desperately attempting to cash in on the fact that Liberty is now a stable and secure company to work for. While Nolan is always ready to distort the facts at Liberty, has he ever told anyone of his interest in arithmetic?

### FACTS

1. Dues of \$6 per month x 200 employees equals \$14,400.00 per year. In ten years this is \$144,000.00. At \$5 per month it is \$120,000.00. What is Nolan going to do with all of the money?

ANSWER - At Liberty Nolan is not going to do anything with it because he does not represent Liberty employees and your company is completely confident that the Court of Appeals of the United States will rule that Liberty's employees were not given a fair election because of Nolan's actions.

2. Is Ted Nolan telling the truth about the results of the election?

ANSWER - Ted Nolan is desperately telling half truths and trying to mislead you again.

WHAT DOES TED NOLAN KNOW?

1. Nolan knows the election was investigated and the investigators ruled against him.
2. Nolan knows the investigative report was not accepted by the board.
3. Nolan knows that the board refused to receive evidence of the investigation and refused to give the company a hearing.
4. Nolan knows that when the election gets to Court the evidence of what he did will be before the Court.
5. While Nolan likes to talk big and make big threats and childish drawings he is "histling by the cemetery."
6. Nolan knows that one more step by the MLRB is required by law before the Court can review the election. You can expect him to pound his chest harder and become more hysterical as his day in Court approaches.
7. Nolan also knows that under the law a company must refuse to bargain with a union that has acted unfairly in order to have a Court review of the election.

QUESTION

If Ted Nolan believes he acted fairly and did not pervert the election, what is his problem?

ANSWER - Nolan knows that Liberty could not and would not defy an order of the Court of Appeals of the United States. Nolan's problem is that he is afraid that the Court's order will be against him - not the Company - so he can't wait - he is going to keep his propaganda coming and try to mislead you.

QUESTION

What does Liberty think?

ANSWER - Liberty knows that its employees are a lot smarter and more industrious than the free-loader Nolan. They are not going to go Nolan's line until they get all the facts.

WHAT ABOUT WILLIS NEWBY?

Willis Newby's card was pulled with that of another employee when neither of them reported for work or called in on the most critical production day Liberty has had in all of its history. A day following a holiday and following a fire where management and employees worked day in and day out together to get the line back in production. Everyone had been informed that they were to report for work that day and everyone did except for a few people who had special problems but who called in early and informed the company. The Company felt that Willis Newby knew that he was to report for work on this critical day and felt that Willis Newby was aware that difficulty in the past existed in getting production through his area of the line. Consequently, he must have known that of all days it was very important for him to call in early if he had a problem. Instead of doing this he gave conflicting reasons for not coming in and then belatedly made a claim that his telephone was out of order. First the company heard from Willis Newby that he didn't know he was supposed to report for work on Tuesday morning. Then subsequently it heard from Willis Newby that his telephone was out of order and finally Willis Newby claimed he was sick. At this point it was not unreasonable for your company to believe that Willis Newby was not really interested in work at Liberty.. and that was the conclusion.

WITH RESPECT TO GEORGE MOROSCHAK

Nolan knows that every company in Indiana has workman's compensation insurance and that Mr. Moroschak's claim is being considered by the insurance company to whom Liberty pays thousands of dollars per year in premium for its employees. Mr. Moroschak's claim is being processed. If the carrier turns down a valid claim by a Liberty employee it will not only lose Liberty's business but that claim will be pressed by Liberty itself to a just conclusion. What case has Nolan uncovered?... The only case he has is the brief case that he and the union attorneys would like to put those cash dues in.

Best regards,

*E. J. Curney*

[GENERAL COUNSEL'S EXHIBIT No. 5]

September 26, 1966

Mr. Edward Hussey  
 Liberty Coach Company, Inc.  
 Syracuse, Indiana

Dear Mr. Hussey:

This letter will serve as official notification to you that the International Union of Electrical, Radio and Machine Workers, AFL-CIO is currently engaged in an organizational campaign among the employees of Liberty Coach Company, Inc.

The following employees of your Company are serving as Organizational Committee Members within the plant, and have been authorized by the International Union of Electrical, Radio and Machine Workers, AFL-CIO to participate in such organizational activities under the protection of Section 7 of the National Labor Relations Act, as amended.

James M. Scott ✓  
 Maurice Fidler  
 Fred Persenotte ✓  
 David C. Wright  
 Willis Jr. Newby  
 Ronald Heffner  
 Craig Baker

Duane Maynard ✓  
 Joe Geiger  
 Martin Craft  
 Dick Owen ✓  
 Jerry L. Fletcher ✓  
 Gerald Baker

Yours very truly,

Ted Nolan  
 International Representative  
 IUE-AFL-CIO

TN/ch  
 ccia 325 afl-cio

CC: Mr. William Little, Director  
 National Labor Relations Board  
 150 West Market  
 Indianapolis, Indiana

[GENERAL COUNSEL'S EXHIBIT No. 6]

# LOCAL 800

REPRESENTING LIBERTY COACH EMPLOYEES - SYRACUSE, INDIANA

It is now official!!!

The National Labor Relations Board (NLRB), in Washington, D.C., has now overruled all the objections of the Company and has found that a majority of us at Liberty Coach did cast our ballots in favor of IUE as our collective bargaining representative.

As of last Tuesday, August 15, 1967, the IUE has been designated as the Union which a majority of employees have selected to represent them in bargaining with the Company.

A portion of the document received from the NLRB states:

"All production and maintenance employees of the Employer at its Syracuse, Indiana, establishment, excluding office clerical employees, mobile haul-away truckdrivers, guards, professional employees, and supervisors as defined in the Act."

Note: This simply describes the "bargaining unit" which our Union now represents.

## CERTIFICATION OF REPRESENTATIVE

"IT IS HEREBY CERTIFIED that International Union of Electrical, Radio and Machine Workers, AFL-CIO, has been designated and selected by a majority of the employees of the Employer in the unit found appropriate herein as the representative for purposes of collective bargaining, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment."

Dated, Washington, D.C. August 15, 1967

Note: Each member of the Administrative Committee has a complete copy of the NLRB document which you may read if you so desire.

You will note that the International Union has designated our Union as LOCAL 800.....and your Administrative Committee is not wasting any time in setting up business. A letter, dated August 17, was mailed to Ed Hussey, President of Liberty Coach, which requests that he contact IUE for the purpose of scheduling meetings for bargaining a contract. Also, certain information regarding seniority, wage rates, fringe benefits, etc., was requested from the Company as part of our preparation for negotiations.

Your Committee will meet shortly to advance our plans, and a meeting date for the entire Membership will also be announced to you in the near future. During this time, EACH OF YOU can really help by urging EVERY worker to join Local 800. You can secure IUE Authorization cards from Committee members, and can distribute and get them signed DURING NON-MORNING HOURS, ONLY. (such as before work, during regular breaks and lunch time, and after work). It is also important that you begin to give serious thought to the improvements which you feel are necessary and just in the area of wages, bonus plan, safety, seniority, holidays, vacation, group insurance and pension, and any other matter which affects you as an employee at Liberty Coach. Contract proposals will be one of the key items discussed at the next Membership Meeting.

Local 800 is YOUR Local Union, so let's all pull together to build it.

[GENERAL COUNSEL'S EXHIBIT No. 7]

October 2, 1967

Edward Hussey, President  
Liberty Coach Company, Inc.  
Syracuse, Indiana

RE: Administrative Committee,  
Local 800, IUE-AFL-CIO, CIO

Dear Mr. Hussey:

This letter will serve to notify you that the following employees are members of the Local 800 Administrative Committee, representing all employees of the bargaining unit:

Martin Graft, Chairman  
Max Evans, Secretary  
Gerald Baker  
Lawrence Otis  
Joe Geiger  
Willis Newby  
Floyd Rapp

Craig Baker  
Harold Hostetler  
Clyde Campbell  
Maurice Fisher

Very truly yours,

*Ted Nolan*

Ted Nolan, Int'l. Rep.

BT

cc. William F. Little, Director  
25th Region, IRRB  
cc:File

[GENERAL COUNSEL'S EXHIBIT No. 8]

LIBERTY COACH COMPANY, INC.  
**WARNING NOTICE**

Employee's Name <i>Ben Ray Gordon</i>	Clock No.	Department <i>Floors</i>
Job Classification	Date <i>8-29-67</i>	
<input type="checkbox"/> POOR WORKMANSHIP <input checked="" type="checkbox"/> EXCESSIVE ABSENTEEISM <input type="checkbox"/> INSUBORDINATION <input type="checkbox"/> REFUSAL TO DO ASSIGNED JOB <input type="checkbox"/> INTemperANCE <input type="checkbox"/> TRAINEE FAILURE		<input type="checkbox"/> MISCONDUCT <input type="checkbox"/> CARELESSNESS <input checked="" type="checkbox"/> FAILURE TO REPORT IN WHEN ABS <input checked="" type="checkbox"/> EXCESSIVE TARDINESS <input type="checkbox"/> OTHER — EXPLAIN <input type="checkbox"/>
Warning Made by <i>Clarence</i>		Dept. <i>Floors</i>
Witness <i>Bill Gentry</i>		Employee's Signature <i>Ben Gordon</i>
Approved by <i>Bill</i>		Dept.

WARNING No. 1 2 FINAL

TO: EMPLOYEE, SUPERVISOR, PERSONNEL DEPT.

[GENERAL COUNSEL'S EXHIBIT No. 9]

## EMPLOYMENT TERMINATION RECORD

To: Personnel and Payroll Dept. DATE 9-23-67

Employment of the following person is to be terminated for the reasons given and in accordance with conditions described herewith.

NAME OF EMPLOYEE <u>Ben Ray Vanden</u>		CLOCK No. <u>3429</u>
DEPARTMENT OR LOCATION	JOB or POSITION	
EFFECTIVE DATE <u>9-16-67</u>	ELIGIBLE FOR RE-EMPLOYMENT YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	

Employee has RESIGNED for the following reason:

☐ Has better job    ☐ Dislike of work    ☐ Dissatisfied  
☐ Pay too low    ☐ Going to school    ☐ Joined Armed Forces  
☐ Family reasons    ☐ Sickness or health    ☐ Quit without notice  
☐ Leaving town    ☐    ☐

I hereby certify that I have resigned due to the above reason.

Signed

Employee has been LAI D OFF for the following reason:

☐ Poor workmanship    ☐ Elimination of job    ☐  
☐ Completion of job    ☐ Temporary job    ☐  
☐ Labor dispute    ☐ Production decrease    ☐

EXPLANATION (Use separate sheet if necessary)

Employee has been DISCHARGED for the following reason:

☐ Misconduct    ☐ Intemperance    ☐ Trainee failure  
☐ Incompetence    ☐ Poor attendance    ☐ Insubordination  
☐ Refused other work    ☒ Miscellaneous    ☐

EXPLANATION (Use separate sheet if necessary)

Failing to report in when absent

REPORT MADE BY <i>Col. Warren E. C. - 9</i>	DEPT.
APPROVED BY	DEPT.

Be sure that employee has checked in all tools and equipment with stock room.

[GENERAL COUNSEL'S EXHIBIT No. 10]

LIBERTY COACH COMPANY, 'C.

## WARNING NOTICE

Employee's Name <i>G. R. Baker</i>	Clock No. <i>6301</i>	Department <i>Stecher</i>
Job Classification	Date <i>11-21-67</i>	
<input type="checkbox"/> POOR WORKMANSHIP <input checked="" type="checkbox"/> EXCESSIVE ABSENTEEISM <input type="checkbox"/> INSUBORDINATION <input type="checkbox"/> REFUSAL TO DO ASSIGNED JOB <input type="checkbox"/> INTemperance <input type="checkbox"/> TRAINEE FAILURE		
<input type="checkbox"/> MISCONDUCT. <input type="checkbox"/> CARELESSNESS <input type="checkbox"/> FAILURE TO REPORT IN WHEN ABSEN <input type="checkbox"/> EXCESSIVE TARDINESS <input type="checkbox"/> OTHER — EXPLAIN <input type="checkbox"/>		
Warning Made by <i>Charles Warren</i>		Dept.
Witness <i>N. E. Warner</i>		Employee's Signature <i>G. R. Baker</i>
Approved by		Dept.

WARNING No. 1 2 FINAL

TO: EMPLOYEE SUPERVISOR PERSONNEL DEPT.

WARNING No.                      1                      2                      FINAL  
 TO: EMPLOYEE    SUPERVISOR    PERSONNEL    DEPT.

[GENERAL COUNSEL'S EXHIBIT No. 9]

EMPLOYMENT TERMINATION RECORD

To: Personnel and Payroll Dept.    DATE 9-23-67

Employment of the following person is to be terminated for the reasons given and in accordance with conditions described herewith.

NAME OF EMPLOYEE <u>Ben Ray Vanden</u>		CLOCK No. <u>3429</u>
DEPARTMENT OR LOCATION	JOB or POSITION	
EFFECTIVE DATE <u>9-16-67</u>	ELIGIBLE FOR RE-EMPLOYMENT YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	

Employee has RESIGNED for the following reason:

☐ Has better job    ☐ Dislike of work    ☐ Dissatisfied  
☐ Pay too low    ☐ Going to school    ☐ Joined Armed Forces  
☐ Family reasons    ☐ Sickness or health    ☐ Quit without notice  
☐ Leaving town    ☐    ☐

I hereby certify that I have resigned due to the above reason.

Signed \_\_\_\_\_

Employee has been LAID OFF for the following reason:

☐ Poor workmanship    ☐ Elimination of job    ☐  
☐ Completion of job    ☐ Temporary job    ☐  
☐ Labor dispute    ☐ Production decrease    ☐

EXPLANATION (Use separate sheet if necessary)

Employee has been DISCHARGED for the following reason:

☐ Misconduct    ☐ Intemperance    ☐ Trainee failure  
☐ Incompetence    ☐ Poor attendance    ☐ Insubordination  
☐ Refused other work    ☒ Abandonment    ☐

EXPLANATION (Use separate sheet if necessary)

Failure to report in when absent

REPORT MADE BY <i>Col. Warren (C-9)</i>	DEPT.
APPROVED BY	DEPT.

Be sure that employee has checked in all tools and equipment with stock room.

[GENERAL COUNSEL'S EXHIBIT No. 10]

LIBERTY COACH COMPANY, 'C.

## WARNING NOTICE

Employee's Name <i>G. R. Baker</i>	Clock No. <i>6301</i>	Department <i>Stockroom</i>
Job Classification	Date <i>11-21-67</i>	
<input type="checkbox"/> POOR WORKMANSHIP <input checked="" type="checkbox"/> EXCESSIVE ABSENTEEISM <input type="checkbox"/> INSUBORDINATION <input type="checkbox"/> REFUSAL TO DO ASSIGNED JOB <input type="checkbox"/> INTemperANCE <input type="checkbox"/> TRAINEE FAILURE		
<input type="checkbox"/> MISCONDUCT. <input type="checkbox"/> CARELESSNESS <input type="checkbox"/> FAILURE TO REPORT IN WHEN ABSEN <input type="checkbox"/> EXCESSIVE TARDINESS <input type="checkbox"/> OTHER — EXPLAIN <input type="checkbox"/>		
Warning Made by <i>Charles Warren</i>		Dept.
Witness <i>N. E. Warner</i>		Employee's Signature <i>G. R. Baker</i>
Approved by		Dept.

WARNING No.

1

2

FINAL

TO: EMPLOYEE. SUPERVISOR. PERSONNEL DEPT.

[GENERAL COUNSEL'S EXHIBIT No. 11]

## LIBERTY COACH COMPANY, II

## WARNING NOTICE

Employee's Name <i>Douglas Pinkerton</i>	Clock No. <i>1212</i>	Department <i>Trinity</i>
Job Classification <i>C</i>	Date <i>10-30-67</i>	

- ☐ POOR WORKMANSHIP  
☐ EXCESSIVE ABSENTEEISM  
☐ INSUBORDINATION  
☐ REFUSAL TO DO ASSIGNED JOB  
☐ INTemperance  
☐ TRAINEE FAILURE

- ☐ MISCONDUCT  
☐ CARELESSNESS  
☐ FAILURE TO REPORT IN WHEN ABSENT  
☐ EXCESSIVE TARDINESS  
☐ OTHER — EXPLAIN

☒ Late in reporting absenteeism 10-30-67

Warning Made by *C.W. Wires*

Witness

*H. E. Wagoner*

Approved by

Dept.

Employee's Signature

Dept.

WARNING No.

①

2

FINAL

TO: EMPLOYEE SUPERVISOR PERSONNEL DEPT.

Re: Douglas Pinkerton — # 1212

10/30/67

For Employee's file

The above employee was absent this morning and did not report reason for absenteeism until afternoon. He stated he had trouble with his car in gear Sunday evening, 10/29/67, and this morning he got only as far as Wagoner's house.

BEST COPY

from the original

Service in North Dakota where he used to work. He tore down the rear end and found the ring and pinion gear badly worn which he replaced by ordering new parts there from service station.

He stated he was busy working on his car and just forgot to call the office earlier, and didn't realize the importance of calling earlier. He stated he would be at the job tomorrow morning.

I recommend a warning notice be given and an explanation of the reason for reporting absenteeism as soon as possible.

*Heath D. [unclear]*

[GENERAL COUNSEL'S EXHIBIT No. 12]



# AUTHORIZATION CARD



INTERNATIONAL UNION OF ELECTRICAL,  
RADIO AND MACHINE WORKERS, AFL-CIO-CLC  
(IUE-AFL-CIO-CLC)

I authorize IUE-AFL-CIO-CLC to act as my collective bargaining representative in all matters pertaining to all conditions of employment.

*[Signature]* *7-21-66*  
(Signature) (Date)

*1111 1st St.* *1st*  
(Address) (City)

*1111 1st St.*  
Company

Form 2-E

[GENERAL COUNSEL'S EXHIBIT No. 13]

# MEMBERSHIP MEETING

## TOMORROW

4:45 pm

SEPT. 7

## SCOUT CABIN

Contract proposals will be set forth at this meeting, and your Administrative Committee wants and needs your suggestions and approval.

We urge every member to attend this FIRST official meeting of your Union ----- LOCAL 800, IUE-AFL-CIO, CLC. Our Charter will be presented to us by the International Union, and all members present will receive the oath of membership.

Fraternally,  
Administrative Committee,  
Local 800, IUE-AFL-CIO, CLC

Marty Graff, Chairman  
Joe Geiger  
Max Evans  
Willis Newby  
Floyd Rapp  
Craig Baker  
Gerald Baker  
Larry Otis  
Harold Hostetler

Issued: 9-6-67

[GENERAL COUNSEL'S EXHIBIT No. 14]

**International Union of Electrical, Radio and Machine Workers**

Affiliated with the American Federation of Labor &amp; the Congress of Industrial Organizations

702 W. Jefferson St.



Fort Wayne, Indiana 46804

July 26, 1967

To All Liberty Coach Employees:

October 28, 1966 ---- that was the day, nearly nine months ago, when the National Labor Relations Board conducted the election at Liberty Coach.

It was then that a MAJORITY of Liberty Coach employees voted to establish a Union so that a contract could be negotiated to protect and improve wages, hours, and working conditions in the plant.

And for these last, long nine months, IUE has defended the rights of the majority against an array of legal maneuvers and smokescreens engaged in by the Company's attorneys, in an attempt to prevent you from establishing your own Local Union.

But, finally, it appears that the will of the majority will be honored and you can begin the task of building your Union and making preparations to negotiate a contract with the Company.

Employees who were here in October of last year, and employees who have since been hired, no doubt have many questions which have arisen over this span of time. Every effort will be made to answer those questions so that each employee may better understand the past in order to build for a better future.

EVERY EMPLOYEE IS URGED TO ATTEND THE MEETING ---- (TOMORROW)

THURSDAY      JULY 27, 1967

4:45 PM

SCOUT CABIN (Syracuse)

The agenda will include discussion and plans for:

1. Election of Officers
2. Election of Stewards
3. Election of a Negotiating Committee
4. Constitution and By-Laws
5. Contract Proposals and Negotiations with the Company.

Issued by your IUE-AFL-CIO----Liberty Coach Organizing Committee....

[GENERAL COUNSEL'S EXHIBIT No. 16]

NATIONAL LABOR RELATIONS BOARD

PETITION

INSTRUCTIONS.—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.  
If more space is required for any one item, attach additional sheets, numbering them accordingly.

DO NOT WRITE IN THESE SPACES	
CASE NO.	25-RC-3332
DATE FILED	Sept. 27, 1966

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under proper authority:

1. Purpose of this Petition (Check only the one box which is appropriate)

- A. ☒ RC—CERTIFICATION OF REPRESENTATIVES (INDIVIDUAL, GROUP, LABOR ORGANIZATION).—A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner, and Petitioner desires to be certified as representative of the employees for purposes of collective bargaining, pursuant to section 9 (a) and (c) of the act.\*
- B. ☐ RM—REPRESENTATION (EMPLOYER).—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner as defined in section 9(a) of the act.\*
- C. ☐ RD—RE-CERTIFICATION.—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative as defined in section 9(a) of the act.\*
- D. ☐ UD—WITHDRAWAL OF UNION SHOP AUTHORITY.—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.

\*NOTE.—If a charge under section 8(b)(7) of the act has been filed involving the Employer named herein, the statement following the description of the petition shall not be deemed made.

2. NAME OF EMPLOYER Liberty Coach Company, Inc.		EMPLOYER REPRESENTATIVE TO CONTACT Edward Hussey	PHONE NO. 457-3332
3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED (Street and number, city, zone, and State) Syracuse, Indiana			
4a. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.) Factory		4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE House Trailers	
5. Description of Unit Involved (If more space is needed, continue on another sheet)			6a. NUMBER OF EMPLOYEES IN UNIT
Included All production and maintenance employees at the Company's plant in Syracuse, Indiana			Approx. 160
Excluded All truck drivers, guards, professional, technical, and salaried employees, and supervisors as defined in the act.			6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

(If you have checked box RC in 1.A. above, check and complete EITHER item 7a or 7b, whichever is applicable)

- 7a. ☒ Request for recognition as Bargaining Representative was made on September 26, 1966 and Employer declined recognition on or about No reply (If no reply received, so state)
- 7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

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from the original

## 8. Recognized or Certified Bargaining Agent (If there is none, so state)

NAME	Affiliation
None	

ADDRESS	DATE OF RECOGNITION OR CERTIFICATION

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY (Show month, day, and year)

10. IF YOU HAVE CHECKED BOX UP IN 1.D. ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP (Month, day, and year)

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED?

YES..... NO...X...

11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING?

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF

(Insert name)

ORGANIZATION, OF

(Insert address)

SINCE

(Show month, day, and year)

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c), WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES, AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE. (IF NONE, SO STATE.)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM (Required only if Petition is filed by Employer)
None			

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

International Union of Electrical, Radio and Machine Workers, AFL-CIO

(Petitioner and affiliation, if any)

By Ted Nolan

(Signature of representative or person filing petition)

International Representative

(Title, if any)

Address 702 West Jefferson Street, Ft. Wayne, Ind.

(Street and number, city, zone, and State)

743-7307

(Telephone number)

WARNING: FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

\*\*\*

[Caption Omitted in Printing]

REPORT ON CHALLENGED BALLOTSANDOBJECTIONS TO CONDUCTAFFECTING THE RESULTS OF ELECTIONANDRECOMMENDATIONS TO THE BOARD

Pursuant to a Stipulation for Certification Upon Consent Election approved  
by the Acting Regional Director on October 11, 1966, an election was conducted

on October 28, 1966, among certain employees<sup>1/</sup> of the above-named Employer to determine whether or not they desired to be represented by the Petitioner for purposes of collective bargaining. The tally of ballots<sup>2/</sup> served upon the parties at the conclusion of the election showed the following results:

Approximate number of eligible voters	197	
Void ballots	0	
Votes cast for Petitioner		94
Votes cast against Petitioner		94
Valid votes counted		188
Challenged ballots		2
Valid votes counted plus challenged ballots		190

Challenges are sufficient in number to affect the results of the election.

Both the Petitioner, on November 1, 1966, and the Employer, on November 4, 1966, filed timely Objections to the election, and each served a copy of their respective Objections on the other party. Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board, the undersigned has caused an investigation to be made with respect to the challenged ballots and Objections, and reports thereon as follows:<sup>3/</sup>

#### PETITIONER'S OBJECTIONS

1. The Company, through its representatives, threatened employees with the closing of the plant if the Union won the election.
- 
- 1/ The appropriate bargaining unit as set forth in the Stipulation is as follows: "All production and maintenance employees of the Employer at its Syracuse, Indiana establishment; BUT EXCLUDING all office clerical employees, all mobile home haulaway truck drivers, guards, and all professional employees and supervisors as defined in the Act".
  - 2/ Service of the tally of ballots was acknowledged by authorized observers of the parties. The observers also signed certificates that the balloting was fairly conducted and that all eligible voters were given an opportunity to mark their ballots in secret and that the ballot box was protected in the interest of a fair and secret vote.
  - 3/ All parties were requested to and have furnished various statements and evidence in support of their respective positions as to the issues raised by the challenges and Objections. In addition, agents of the undersigned have made further investigations with respect to the matters under consideration.

2. The Company, through its representatives, threatened employees with loss of the annual Christmas Bonus if the Union won the election.
3. The Company granted an across-the-board wage increase, which was timed to influence the election.
4. The Company substantially increased the weekly production bonus paid to the employees, with the timing of such increase having influence upon the outcome of the election.
5. The Company, through its representatives, burned Union-distributed leaflets in the plant, and in full view of employees, thus creating an atmosphere of coercion.
6. NLRB Election Notices, posted by the Company, were marked "No", and were otherwise defaced.

By these and other acts, the Company, through its representatives, interfered with, coerced, and intimidated the employees, thus preventing a free and fair election.

#### Objections 1 and 2

The Petitioner has failed to adduce evidence and further concedes that it cannot produce evidence in support of its allegations contained in Objections 1 and 2. Accordingly, it is recommended that they be overruled. Audubon Cabinet Company, 119 NLRB 349.

#### Objection 3

The Employer readily concedes that on September 12, 1966, it announced and granted a 10 cent an hour pay raise to all its hourly paid plant employees, effective as of September 12, 1966. The Employer further admits that at such time it also informed all employees that effective January 30, 1967, wages would be increased another 10 cents an hour.

Petitioner's witnesses corroborate the Employer that both pay raises were announced on or before September 12, 1966, and that the September pay raise became effective as of that date. Furthermore, both the Employer payroll records and the employee pay stubs submitted by the Petitioner verify that the

September pay raise became effective as of September 12, 1966, for the payroll period ending September 18, 1966.

Inasmuch as the above conduct and events alleged by the Petitioner to be objectionable occurred prior to the filing of the petition on September 27, 1966, they may not be found to be objectionable. Goodyear Tire & Rubber Co., 138 NLRB 453. Therefore, it is recommended that Objection 3 be overruled.

#### Objection 4

In support of Objection 4, the Petitioner proffers a compilation of a representative employee's bonus earnings from the pay period ending January 12, 1964, through the pay period ending October 23, 1966, which is attached hereto as Exhibit 8, and two other employees' check stubs which accord with the compilation, and alleges that the Employer altered its production schedule to enable the employees in the unit to earn more bonus during the period between the filing of the petition and the election. Of the four witnesses proffered by Petitioner in support of this allegation, two testify that the bonus earnings did increase during the period in question but concede they have no evidence that the Employer controlled production scheduling for that purpose. The other two Petitioner witnesses state that the Employer did, in fact, intentionally increase the bonus by setting up an easy production schedule as to models and by scheduling the production of similar models consecutively, thereby enabling employees to produce more rapidly.

The Employer denies Petitioner's allegations and proffers sworn statements of nine production employees who variously deny any Employer tampering with the bonus; state that the employees could have made as much bonus prior to the period in question had they worked harder and that they did not work harder due to general dissatisfaction, exceptionally hot weather, and a turnover in

employees; and, in their opinion, the change in bonus was due to a fluctuation in the number of employees employed, which affected the base.

A careful examination of the Employer's bonus records from January 12, 1964, through October 30, 1966, establishes that the same bonus formula and conversion rates have obtained throughout and have been uniformly applied.

The Employer does not produce for open stock, but only to dealers' order. The production schedule, according to the Employer, is based on orders in hand and the production schedules for the period in question and the two periods similar to it in duration immediately preceding the filing of the petition are summarized as to quantities and models produced as follows:

Production Schedule Summary in Number of Units

Model No.	9/26/66 through 10/28/66	8/29/66 to 9/26/66	7/27/66 to 8/29/66
3612	3	3	0
4310	2	2	3
4312	3	4	9
4610	3	1	0
4612	17	7	13
5010	10	20	2
5012	65	64	78
5510	0	0	1
5512	48	49	46
6010	1	1	0
6012	89	66	97

It is obvious that there is no substantial difference in numbers and models produced from period to period. Further, contrary to Petitioner's allegation, there is no disparity between the quantities of particular models scheduled consecutively during the period in question and the period immediately preceding. Thus, as to Model 5012, there were four high runs of 5 in the period in question and six high runs of 5 in the preceding period; for Model 5512, there were single high runs of 11, 9 and 8 between September 26 and October 28, and single high runs of 12 and 7 in the period preceding and the remaining

runs of Model 5512 in both periods range from 2 to 5; as to Model 6012, all runs in both periods range between 2 and 4, with similar distribution. The earlier period has two runs of 3 and one single coach of Model 4612, and the September 26 to October 28 period has one run of 5, three runs of 3, and a run of 2 of the same model.

Apart from the fact that the evidence does not support the Petitioner's allegations as to rigging of production schedules, it should also be noted that although production showed no substantial variation, the number of employees receiving the bonus has gradually reduced from a high of 211 in the week ending June 19, 1966, to the figure of 192, in the week ending October 30, 1966.

From all of the foregoing I conclude that the evidence does not support Petitioner's allegation and recommend that Objection 4 be overruled.

#### Objection 5

The only evidence the Petitioner has proffered in support of Objection 5 consists of the following statement it adduced from one witness:

"As I entered the Metal Dept. shortly before 6 a.m. on the morning of October 27, 1966 I observed a group of my fellow employees looking towards the foreman, Oscar Bjella, who was sitting on a cart in the area. I saw the foreman holding a piece of paper about 8" x 12" in size - he then lit this paper and dropped it on the floor".

The Petitioner concedes that its only proffered witness could not identify the paper as Union literature. However, alleged foreman Bjella admitted that a Union leaflet which he was reading in that area that morning accidentally caught on fire while he was lighting his pipe with a match, whereupon he shook the paper with his hand, then placed the lighted paper on the floor and stamped on it. Bjella further stated, and it stands uncontradicted, that although there were about "a dozen" employees in the area and that some of them "may

have seen" the incident, he at no time before, during, or after the burning made any statements or discussed either the burning or the leaflet with anyone.

Inasmuch as the undersigned is of the opinion that the foregoing incident was clearly noncoercive in nature and affect and did not constitute conduct interfering with the results of the election, I find it unnecessary to resolve the questioned supervisory or agency status of Bjella. Accordingly, I find Objection 5 to be without merit and recommend that it be overruled.

#### Objection 6

The Petitioner contends that the sample ballots contained in two Board Election Notices posted at two time clock locations situated on the east and west sides of the hallway in the main plant building were defaced by unknown persons at various times prior to the election and remained defaced up and until the close of the election. No allegations were made by Petitioner regarding the two other election notices which were posted at time clock locations in the plant's other two buildings, nor is there any evidence that the latter two were in any way defaced.

Witnesses proffered by the Petitioner gave the following varied accounts as to what the defacement of the sample ballots consisted of:

- (a) Two witnesses stated that on the first day the notices were posted they observed an "X" marked in the No boxes of the sample ballots and later at an undetermined time prior to the election, they noticed a similar marking in the Yes boxes of both sample ballots.
- (b) Another witness noticed that on the first posting day he saw an "X" in both the Yes and No boxes of the sample ballot on the west side of the hallway, while the other sample ballot only had an "X" in the No box.
- (c) Three witnesses stated they observed a facsimile of "Mickey Mouse" drawn in the proximity of the Yes box on one notice.
- (d) Petitioner's International Representative Nolan stated that prior to the pre-election conference on election day he noticed

a combination of "X" marks and check marks in the Yes and No boxes of both sample ballots. Additionally, Foreman Speicher testified that a few days before the election he noticed that one of the sample ballots in the main plant time clock area had an "X" marked both in the Yes and No boxes, but that he did not report the defacings to the Plant Superintendent or any other Company representative.

Both the Petitioner and its witnesses admit that they do not know the identity of the persons who made the alleged markings, and further admit that although they had knowledge of the defaced notices from the first day the notices were posted, they did not complain about or report them to either the Board Agent and/or any Company representatives or undertake any steps to have the defaced notices replaced or corrected until after the election. Additionally, the Petitioner admits it can produce no evidence attributing the responsibility for the defacings to the Employer.

The Employer denies responsibility for the defacings and explains that it did not replace any election notices or undertake to remedy the defacements as it did not become aware of them until after the election.

Accordingly, in view of the foregoing, I find Objection 6 to be without merit and recommend that it be overruled. Lloyd A. Fry Roofing Company, 108 NLRB 1297; Rheem Manufacturing Company, 114 NLRB 404/406; F. H. Snow Canning Company, Inc., 119 NLRB 714, 718

#### ADDITIONAL ELECTION INTERFERENCE ALLEGED BY THE PETITIONER

The Petitioner further complains that:

- (a) The Company through its representatives, namely Plant Superintendent Ted Auer, threatened employees with loss of their (1) production bonus; (2) canteen privileges; (3) smoking privileges; (4) "other benefits"; and (5) jobs by closing the plant, if the Union won the election.
- (b) That during the course of the campaign period various rumors and expressions of fear pertaining to the loss of the benefits

and privileges listed above in paragraph (a) and plant shut down were widespread and prevalent among employees and thus created an atmosphere of fear and anxiety among the voters "and interfered with their freedom of choice and made them reluctant to vote for the IUE".

Petitioner concedes it is unable to produce any evidence that either Plant Superintendent Auer or any other Company representatives or agents made any statements or threats pertaining to the loss of any benefits or privileges.

However, Petitioner proffered several witnesses who testified at some length as to various casual conversations with fellow employees wherein they discussed or were questioned about the possible loss of the above-mentioned benefits, privileges and plant shutdown if the Union were to win the election. All witnesses proffered by Petitioner readily admitted that all statements or questions addressed to them concerning these matters were made by fellow nonsupervisory employees and that the assertions made at such times merely constituted "personal opinions", "shop talk", expressions of personal apprehension, or were based on pre-election shop rumors.

Petitioner and its proffered witnesses concede that they cannot produce any evidence attributing the responsibility for the purported rumors to the Employer or its representatives and agents. Furthermore, the Petitioner has failed to proffer evidence establishing that either the employees' alleged assertions of apprehension or that the prevalence of shop rumors concerning the loss of any benefits or privileges, or plant shutdown were predicated on any actions or statements made by the Company.

The Employer gave no campaign speeches, nor distributed any campaign literature during the pre-election period, and there was no evidence proffered or adduced that the Employer was in any way responsible for the rumors or alleged employee apprehension.

Petitioner contends that the Employer threatened employees with loss of their smoking privileges if the Union won the election. In support of its contention Petitioner proffered two witnesses who state that on the morning of the election they were smoking in the restroom when Working Foreman Speicher came in and handed an employee his pay check and stated, "After today or "from now on" there will be no more of this". Speicher turned to leave and one employee asked him what he meant by that. Speicher replied, "Smoking", and left without further comment.

Foreman Speicher, while asserting that "No Smoking" signs are posted prohibiting smoking in the restrooms and shop areas during working hours, admitted that in practice the "no smoking policy" was not strictly enforced, and that on many occasions he has observed employees smoking in the restrooms during working time. Speicher admitted that he has brought pay checks to his men in the restroom on occasion, but he denies the alleged incident and further denies ever making the statements, or discussing smoking privileges with employees or ever forbidding them to smoke in that area.

Assuming arguendo that Petitioner's witnesses are accurate in their testimony, the alleged incident reflects such a substantial degree of ambiguity as to preclude a finding that Speicher's alleged conduct and statements of Speicher created a coercive or intimidating affect on employees with respect to their choice in the election. In any event, in view of the totality of the circumstances prevalent during the crucial period, the alleged incident was at most clearly an isolated event and thus not sufficient to warrant setting aside the election.

Therefore, I find it unnecessary to resolve the questioned supervisory status of Speicher.

Accordingly, for the foregoing reasons, I find that the matters alleged by Petitioner as additional election interference are not supported by evidence sufficient to justify setting the election aside and it is recommended that they be overruled.

#### EMPLOYER'S OBJECTIONS

The Employer's Objections allege, in pertinent part, that the Petitioner has interfered with the conduct of the election by:

- "1. Falsely accusing the employer in a so-called "news bulletin" dated October 26, 1966 of granting an extra bonus to fool employees in the course of pre-election activity.
2. Falsely attempting to create an impression that a majority of Liberty Coach workers had signed IUE cards and obtaining signatures on such cards through pretenses and unlawful inducements.
3. Falsely accusing, in campaign literature dated October 21, 1966, the plant superintendent of the company of actions and remarks with respect to election activity and characterizing those remarks as disgraceful and illegal.
4. Falsely accusing the plant superintendent of the company of illegal "fear tactics" for the purpose of influencing employees votes in the election.
5. Falsely accusing the plant superintendent of the company of threatening to close the plant when the union was voted in in violation of Federal Labor Law.
6. Falsely accusing the plant superintendent of the company of threatening to take away the Christmas bonus if employees voted yes.
7. Falsely accusing the plant superintendent of the company of threatening to take smoking privileges away when the union "wins".
8. Falsely characterizing the plant superintendent as a desperate man doing desperate things.
9. Falsely accusing the plant superintendent of the company of having something to hide.
10. Offering of waivers of initiation fee for signing an IUE card on or before the election and as an inducement for voting yes.

B. Distributing copies of a sham letter dated October 21, 1966, addressed to the company President, accusing the plant superintendent of activity such as "to interfere with, restrain, or coerce employees in the exercise of these rights," and accusing the plant superintendent of violations of 8(a)I of the law, and falsely accusing the plant superintendent of additional actions such as questioning employees about their union activity in a manner so as to restrain or coerce the employee.

C. Falsely accusing the plant superintendent of spying on union meetings or pretending to spy.

D. Falsely accusing the plant superintendent of granting wage increases, deliberately timed to discourage employees from forming or joining the union.

E. Falsely accusing the plant superintendent of manipulation of the production bonus and of buying votes against the union.

This activity on the part of the petitioner union was initiated first by distributing to employees a brochure in which a bold type caption states "The boss is breaking the law if he does any of these things", and, "coincidentally", many of the examples given are the grounds now cited and the false accusations made by the petitioner during the course of pre-election activity. Contrasted with the accusations and allegations of the petitioner is the fact that seldom has any employer gone to greater effort to avoid even the slightest influence upon its employees in the free exercise of their voting privilege. The employer distributed no propaganda of any nature through the mails or in handouts to its employees and did not call its employees together, collectively or individually, for the purpose of legitimately influencing their votes, let alone the illegal activities now complained of by the petitioner."

By subsequent letter in further amplification of its Objection 10, the Employer states:

"The union stated that its offer in the News Bulletin of October 21, 1966, to give a charter membership free from the burden of initiation fee, was not in violation of the law. It should be noted that this offer was coupled in juxta position to the statement, "Sign your card today ... and vote "Yes" on October 28th." Again the union is attempting to take advantage of the law, rather than to treat honestly and fairly with the requirements of the law. By coupling the offer with the quoted statement, it is obvious that Mr. Nolan intended to connote that a vote "yes" was required for the free initiation fee."

In still a later letter the Employer says:

"Another matter that the employer now requests the Board to investigate is the rumor that is circulating in its Syracuse establishment that the union has coerced one of the garage mechanics and attempted to coerce another into signing an

affidavit as to the nature of their vote in the challenged ballots. The employer believes that this activity on the part of the union would render these votes invalid, even if they were otherwise eligible ballots."

#### Summary

In substance, the Employer takes the position that the Petitioner's allegedly false literature (attached hereto as Exhibits 1 through 7 and issued on or about the dates they bear); alleged attempts by Petitioner's adherents to elicit anti-union statements from supervisory personnel; an alleged production slowdown by union adherents in about August, September and October 1966; the listing of the names of employees as members of the organizing committee in Exhibit 3, and the names of Oscar Haney and Gene Hill in Exhibit 5, without their permission; false accusations by union adherents that the Employer "rigged" the bonus; an alleged misrepresentation in Petitioner's literature that a majority had signed union cards; and the alleged promise of free initiation fees in Exhibit 3, are all part of a general conspiracy by the Petitioner to render a fair election impossible.

Exhibits 1 through 7 are not objectionable on their face, Hollywood Ceramics, 140 NLRB 221, and assuming that they were, the Employer had ample time to reply to the matters it now deems objectionable. Ralston Purina, 147 NLRB 506.

Insofar as the various activities of union adherents complained of are concerned, the only evidence proffered by the Employer to establish the Petitioner's responsibility for their acts is membership on the organizing committee. This is insufficient to establish an agency relationship between these employees and the Petitioner. H. E. Fletcher Co., 121 NLRB 826, 831; Electric Wheel Co., 120 NLRB 1644, 1647; Dornback Furnace & Foundry Company, 115 NLRB 350, 353.

In regard to the promise of free initiation fees contained in Exhibit 3, a fair reading of the Exhibit in its entirety impels the conclusion that the free initiation fee was not conditioned on how employees voted. Such a waiver as that contained in the Exhibit is proper, inasmuch as there is no condition therein preventing an employee from retaining his freedom of choice in the election. Gilmore Industries, Inc., 140 NLRB 100; Gorbea, Perez & Morell S. en C., 142 NLRB 475.

The Employer proffers no evidence in support of its allegation that Petitioner coerced employees into revealing the nature of their vote after the election. Assuming arguendo that this did indeed happen, it still cannot constitute grounds for Objections since it occurred, if it occurred, after the election.

Of the two employees proffered by the Employer in support of its contention that their names were placed on the organizing committee without their permission, one concedes he signed his name to a list at the meeting where the organizing committee was selected and the other states he knew his name would be on the committee and expresses indifference that his name should be so used. Thus, the Employer's Objection in this respect is without merit. Similarly, the mere use of the names of Haney and Hill cannot be said to be improper electioneering.

In view of the foregoing, and since no other pertinent evidence was proffered or adduced in support of the Employer's Objections, it is recommended that the Employer's Objections be overruled.

#### THE CHALLENGES

The Board Agent challenged the ballots of Richard Timmons and Max Kleinknight

because their names did not appear on the eligibility list. The Employer joins in the challenge and takes the position that these two employees are not eligible voters because they are mechanics at the Employer's garage located in the Village of Wawasee, approximately three quarters of a mile from the main plant in Syracuse and have no community of interest with employees in the bargaining unit.

The Petitioner contends that it was its intention when it entered into the election agreement to include all production and maintenance employees and that the two employees in question perform work related to production and that a community of interest exists between the garage mechanics and the production and maintenance employees so as to require the inclusion of the garage mechanics within the bargaining unit. There was no discussion of the garage mechanics between the parties or with the Board prior to the pre-election conference on October 28, 1966, when the Petitioner for the first time questioned the omission of their names from the eligibility list.

Petitioner further contends:

"The Board has regularly included garage mechanics in a production and maintenance unit without affording them any self-determination election, although truck drivers were in a separate unit or were afforded a self-determination election.

Iowa Packing Company (1947), 74 NLRB 434, 436; American Linen Supply Co. (1960), 129 NLRB 993, 995; Nissen Baking Corp. (1961), 131 NLRB 589; American Cyanamid Co. (1954), 110 NLRB 89. This is based on the view that garage mechanics are not true craftsmen. Gulf Oil Corp. (1954), 108 NLRB 162, 163; C. K. Williams Co. (1953), 106 NLRB 219, 220; Armstrong Cork Co. (1952) 97 NLRB 1057, 1061. Garage mechanics have different skills from truck drivers which require that garage mechanics be placed in a production and maintenance unit rather than a unit of truck drivers. Iowa Packing Co. (1947) 74 NLRB 434, 436. For cases commenting on the lack of community of interest between truck drivers and garage mechanics, see Standard Trucking Co. (1958), 122 NLRB 761, 762; Frederickson Motor Express Co. (1958), 121 NLRB 32, 34; Chemical Express Co. (1957), 117 NLRB 29.

The Board has often pointed out that over-the-road truck drivers are governed as to their hours of work and certain other conditions of employment by I.C.C. regulations not applicable to garage mechanics. Intercontinental Engineering Mfg. Corp. (1961), 134 NLRB 824, 825.

Here, the two garage mechanics will be left without representation unless they are permitted to be included in the production and maintenance unit. Since their votes have been segregated, and the Union will not be certified unless both vote for the Union, they have been afforded what is, in fact, a self-determination election. Therefore, the Union requests that the challenges to their ballots be withdrawn and their votes counted."

Timmons and Kleinknight are the only garage mechanics employed by the Employer. Their place of work is located in a separate building, about three quarters of a mile from the main plant and about one half mile from the haulaway area, which is itself about one half mile from the main plant. They service, maintain and repair the Employer's haulaway trucks and are under the direct supervision of the dispatcher, who maintains his office at the haulaway area and also is the immediate supervisor of the truckdrivers who were excluded from the unit by the parties. The dispatcher has no supervisory authority over any production employees.

Timmons and Kleinknight punch a time clock located at the garage, rather than the ones located at the main plant which are used by the production employees. They are carried on the administrative payroll, rather than the factory payroll which covers all production and maintenance employees. The mechanics are paid \$3.25 per hour and do not participate in the production bonus, whereas production employees are paid \$2.40 per hour and share in the bonus. The plant maintenance man, who voted unchallenged, receives \$2.70 per hour and shares in the bonus. The haulaway truckdrivers do not share in the bonus and are paid on a mileage basis. The garage mechanics did not receive the pay increases granted to production employees in March

and September 1966, and their pay week ends on Thursday, while the plant pay week ends on Sunday. All employees, including the mechanics, receive the same vacation, paid holiday and insurance benefits. Aside from the fact that on one occasion in early 1965 a plant maintenance man worked in the garage for approximately three weeks while a mechanic was off sick, there has been no interchange of employees between the main plant and the garage.

The mechanics buy small parts, as needed, at their discretion, subject to review by the Employer's accounting department; maintain a running inventory of parts stocked; and are the only employees with keys to the garage. No production employees perform garage work, nor do the mechanics perform any production work.

Petitioner asserts that the mechanics have continuing contact with main plant employees, since they allegedly repair and maintain forklifts and other inplant vehicles, both at the plant and at the garage. Petitioner also alleges that the garage men frequently visit the main plant and thus have considerable contact with production employees. The evidence shows that the garage men have indeed visited the main plant on many occasions to pick up automotive parts delivered to the plant. However, these routine visits to pick up parts are clearly incidental to the work performed at the garage and closely related thereto. There is no evidence that the mechanics repair any fixed production machinery. Throughout the entire year of 1966 until the present the Employer has had a continuing maintenance contract with a private concern covering repair and maintenance of forklifts. A review of the repair orders covering all work performed by the garage mechanics from January 1 through October 29, 1966, indicates that of 4,248 total hours worked by the garage mechanics, 173.5 hours were devoted to the repair and maintenance of

service trucks, company owned farm tractors, delivery vans, the Employer's pickup truck, and forklifts. Only 27.5 hours of the 173.5 were devoted to repair of forklifts. Both Timmons and Kleinknight state that about 95% of their time prior to the election was spent working on haulaway trucks at the garage, and the records so reflect.

Inasmuch as the garage is a separately located and distinct operation from the plant; the mechanics are separately supervised; there is no interchange with production and maintenance personnel; the mechanics do not share in the production bonus or perform work directly related to production; they have a different pay week; their function is part of the Employer's distribution system; and their work and interests are separate and distinct from those of the production and maintenance employees; I conclude that the garage mechanics should be excluded from the unit set forth in footnote 1 of this report, and recommend that the challenges to their ballots be sustained.

E. H. Koester Bakery Co., Inc., 136 NLRB 1006, 1013; Gunzenhauser Bakery, Inc., 137 NLRB 1613, 1617; May Department Stores Company d/b/a Famous-Barr Company, 153 NLRB 341, 345.<sup>4/</sup>

The cases advanced by Petitioner in support of its position are inapplicable to the instant case because there is no attempt herein to classify the mechanics as true craftsmen or to include them in a craft unit, and the lack of community of interest between mechanics and truckdrivers is not at issue. Nor is there here any history of collective bargaining or common supervision of mechanics and production and maintenance employees to be considered.

<sup>4/</sup> The Employer's various contentions that the mechanics "constitute management, clerical, confidential and security people in their relationship to Liberty" are not supported by the evidence.

RECOMMENDATION

For reasons hereinabove set forth, it is recommended that the Objections be overruled in their entirety, the challenges to the ballots of Timmons and Kleinknight be sustained, and an appropriate Certification of Results issue.

DATED AT Indianapolis, Indiana, this 29th day of December, 1966.

[Subscription Omitted in Printing]

PETITION FILED ---  
ELECTION DAY SET

IUE-AFL-CIO filed a Petition with the National Labor Relations Board (NLRB) on September 26th, asking that an election be held so that we can vote for the Union.

The NLRB agent assigned to our case has been in contact with both the Company and the Union and has now notified both parties that all details are completed and that the election is set for:

DATE -----FRIDAY, OCTOBER 28th

TIME -----1:00PM to 2:30PM

PLACE -----STORAGE AREA NEAR TIME  
CLOCK IN MAIN BUILDING

The NLRB has ruled that all production and maintenance employees hired on or before October 2, 1966 will be eligible to vote.

Excluded from voting are all office clerical employees, all mobile home haulaway truck drivers, guards, professional employees, and all supervisors.

We have now taken our first major step towards setting up our own IUE Local Union, so that we can negotiate a Union contract and have a real voice in determining our wages, hours, and working conditions.

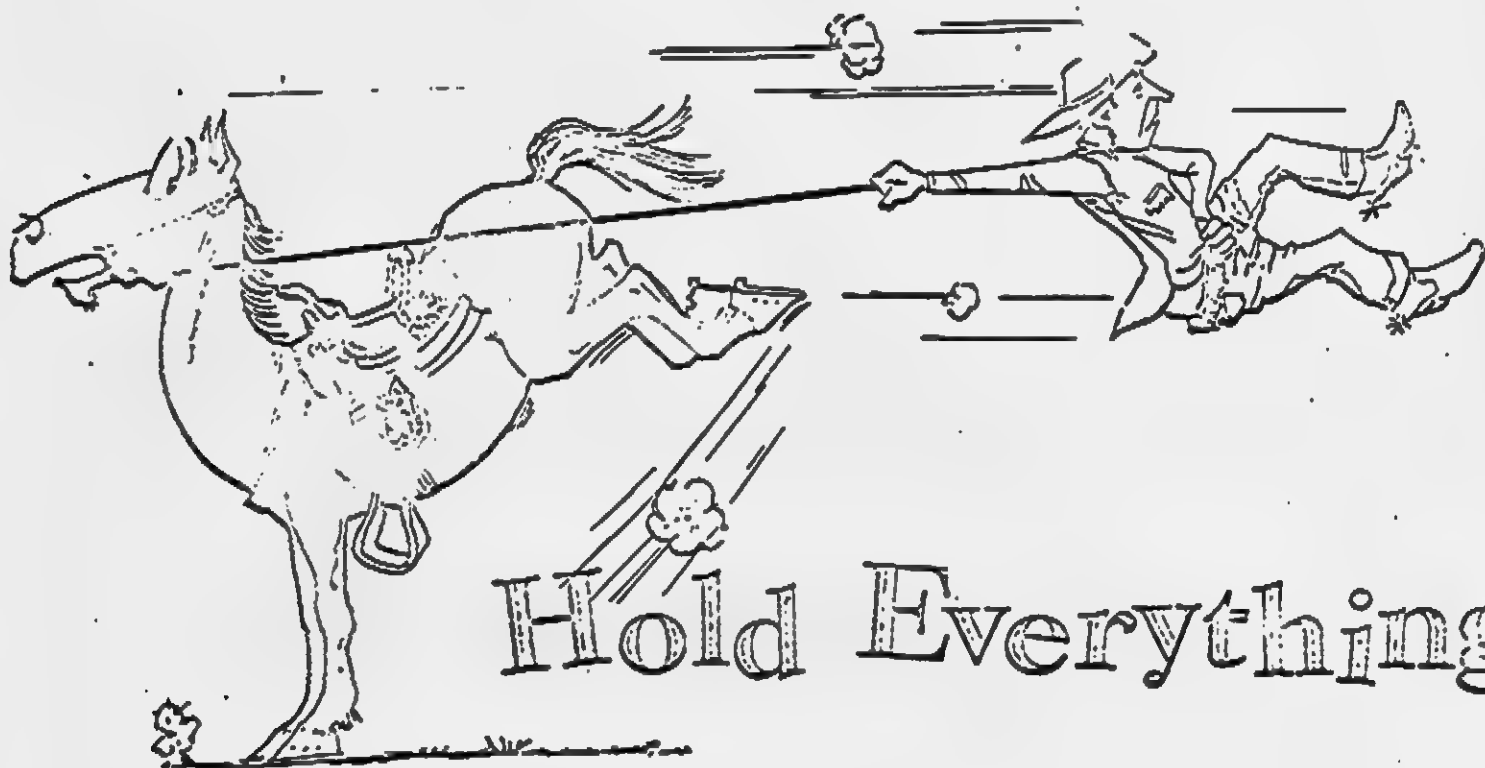
If you have not yet signed an IUE card.....do so today....and become a CHARTER MEMBER of our Union.

LET'S ALL JOIN TOGETHER THIS TIME.....AND WIN THE ELECTION!!!

All employees will have an opportunity to receive more information and have questions answered at meetings which will be scheduled in the near future. PLEASE PLAN TO ATTEND THESE UNION MEETINGS.

-Issued by your IUE-AFL-CIO --- LIBERTY COACH ORGANIZING COMMITTEE.....

\* \* \*



ALL OF US AT LIBERTY COACH HAVE SOME IMPORTANT BUSINESS TO DISCUSS ---

on THURSDAY OCT. 20<sup>TH</sup>

3:45 PM

right after work.

at

MARLEY'S

South on Route 13, about a  
mile and one-half from the  
plant. (Left side of road)

RESTAURANT

Let's talk about: PENSIONS SENIORITY BONUS VACATION TIME OFF  
JOB POSTING

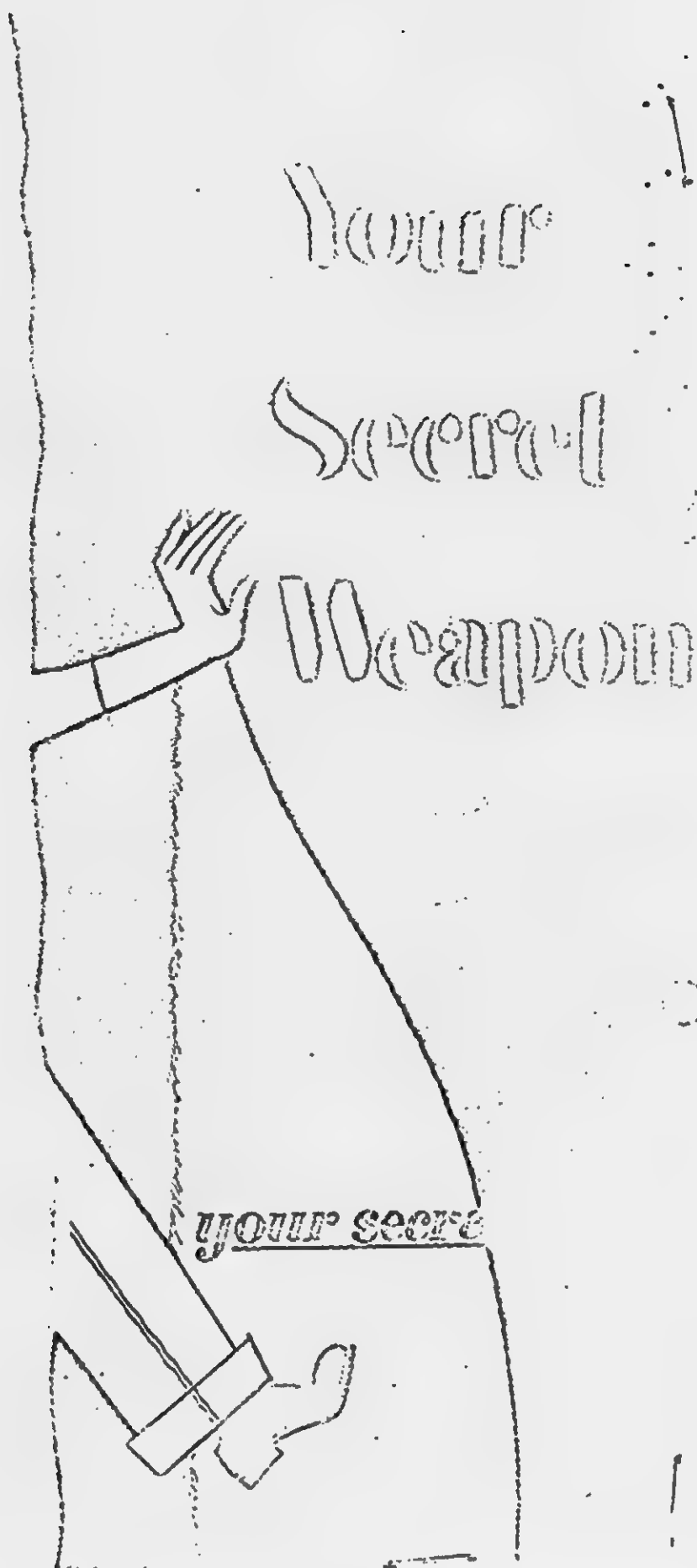
and certainly WAGES -- GRIEVANCE PROCEDURE -- AND SAFETY!

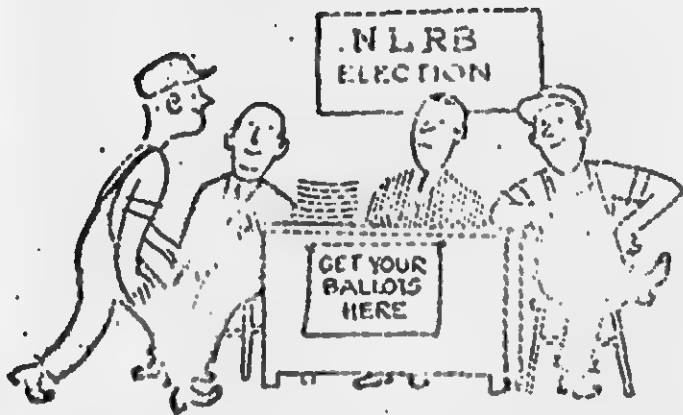
A Union Contract is what we need at Liberty.....for all of us.....

Your Organizing Committee needs YOUR help and ideas in getting the job  
started.....so.....see you on Thursday at Marley's Restaurant!

Issued by your IUE-AFL-CIO -- LIBERTY COACH ORGANIZING COMMITTEE.....

\* \* \*

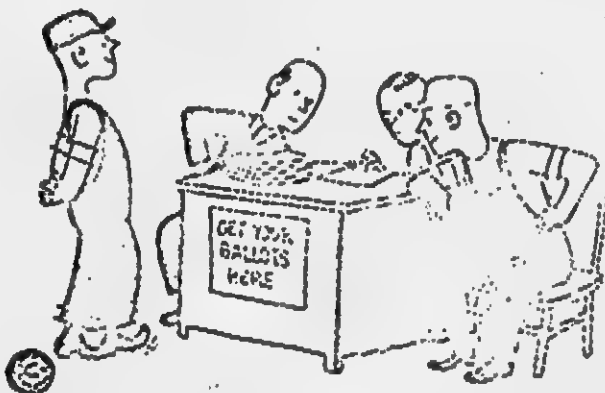




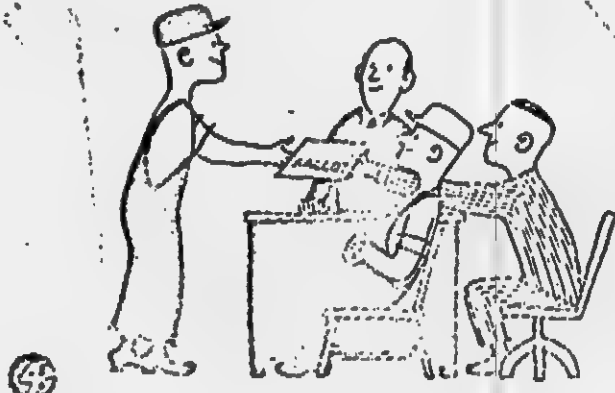
You are ready to vote in an NLRB election. You see sitting at the desk union representatives (your fellow workers), U. S. Government's NLRB agent who conducts the election, and a company representative.



You give your name and clock number.

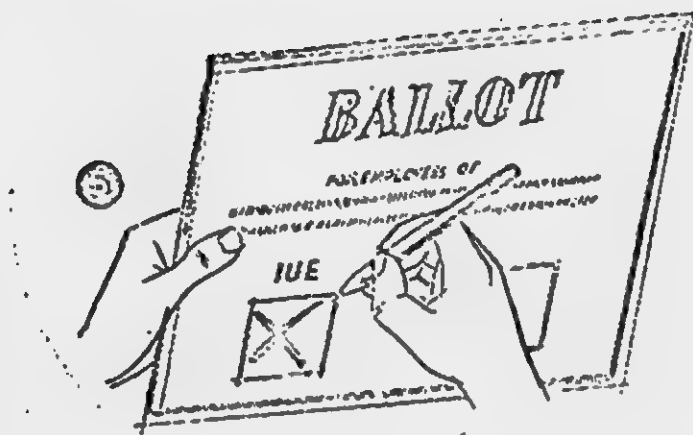


The representatives check your name off the official list of eligible voters so no one else can vote under your name as no one can vote twice.

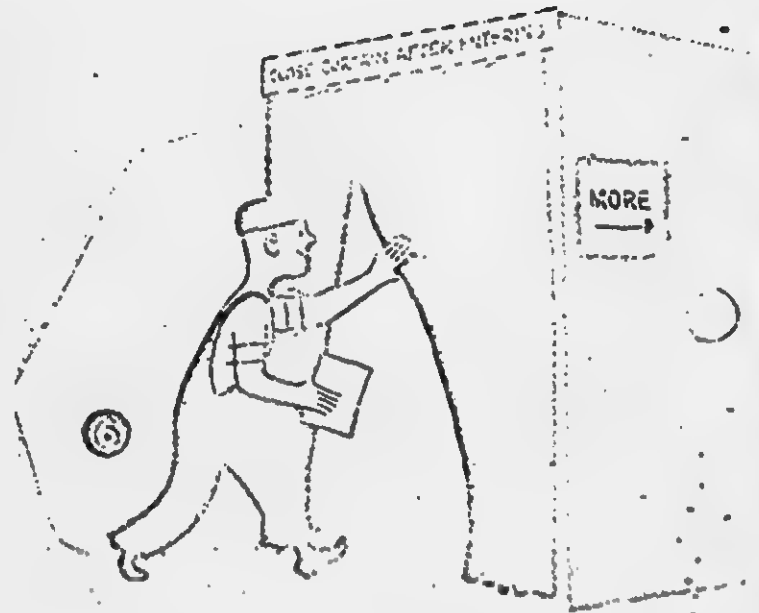


Government agent gives you a ballot. It does NOT list your name or clock number or have any other means of identification.

**The U.S. Government guarantees**  
**your secret ballot**



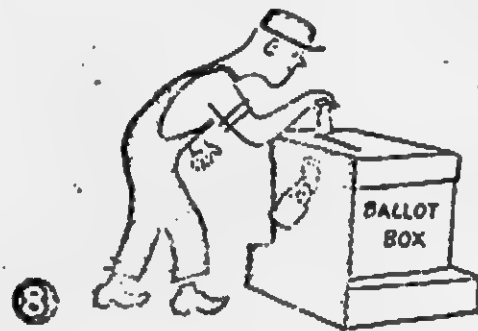
The ballot you receive simply asks if you want IUE as your union in order to raise wages and improve working conditions. The ballot provides a square labelled "IUE" so you can put down your vote for IUE by making an X in the square.



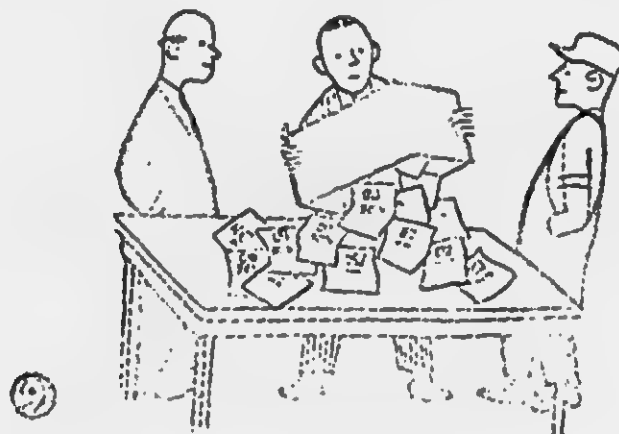
You go into the voting booth which is curtained to give you privacy and to prevent anyone from seeing how you mark your ballot.



After you have marked your ballot, you fold it so no one can see how it is marked and leave the voting booth.



You drop the folded-up ballot into a locked ballot box which no one but the Government agent can open. Your ballot is mixed in with all the other ballots cast by your fellow workers.



After polls are closed, Government agent dumps ballots on table and counting begins.



Government agent counts votes as union and company representatives watch and union and management observers stand in background. After announcing IUE's victory, the government agent seals up the ballots.

### *It's a secret*

The U. S. Government guarantees that your ballot is cast in secret and no one can snoop into the election to learn how you vote. The laws of the country protect your right to organize and your right to vote in secret on your desire for a union.

IUE  -VOTE IUE-AFL-CIO

INTERNATIONAL UNION OF ELECTRICAL,  
RADIO AND MACHINE WORKERS, AFL-CIO  
1126 16th St., N. W. Washington, D. C. 20036

PUO. NO. 1225  
Revised 7-64

\* \* \*

# *Your Right to Organize is Protected by the U. S. Government*

So that you may better understand this law, here are some questions and answers about what you may and may not do.

Q: If, during lunch time or before work time I think I have a chance to sign up one of the other workers, can I sign him up on company property?

A: YES

Q: Can I talk about union matters openly with the other workers at recess, lunch time, or before and after working hours?

A: YES

Q: Can I leave my job and go to another worker and sign him up during working hours?

A: NO

Q: Can a group of us get together and discuss union matters on company property during lunch time or before or after work?

A: YES

Q: Can we get together and talk about the union during working hours?

A: NO

Q: If another worker comes to my job during working hours and asks me to sign him up in the union, what should I do about it?

A: Tell him you will be glad to sign him at noon or after work.

Q: Should I obey company rules?

A: Yes, but when you are organized, you will help make the rules.

## THESE ARE YOUR RIGHTS:

- Every worker has the right to join a union of his own choice.
- To bargain with his employer through representatives of his own choosing.
- To take part in decisions on the wages, hours, and other conditions of his work.
- To have his union represent him in all matters concerning his employment.
- To have his union help him to get the most out of his job.

*You've Got  
A  
Right To  
Organize!*

*This is the Law*

"Employees shall have the right to self-organization, to form, to join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."—Sec. 7, National Labor Relations Act.

October 21, 1966

# NEWS BULLETIN

for all Liberty workers...

Enclosed is a copy of a letter mailed today to Mr. Ed Hussey, President of Liberty Coach.

Please read the letter carefully.....it affects YOU and YOUR rights...

As members of your Organizing Committee, we had hoped that the campaign leading up to the NLRB Election next Friday would be businesslike and honest. To this end, we have done our best to provide all of you with straight answers to your questions and factual information upon which you would then decide to support our effort and vote "YES" on Oct. 28th.

Unfortunately, Ted Auer doesn't want to play the game that way.....

His recent actions and remarks are disgraceful.....AND ILLEGAL!

We are hopeful that Mr. Hussey will straighten him out.....FAST!

Ted Auer can't convince us to vote against the Union by logic and fact, so he now hits the "panic button" and hopes to have us vote against ourselves through the use of illegal "fear tactics".....

His threat to close the plant when we vote the Union in is a violation of Federal Labor Law.....and the actual closing of the plant is also unlawful.....and Ted Auer KNOWS IT!!!

The threat to take away the Christmas Bonus if we vote "YES" is as phony as a 3-dollar bill.....and he knows it!

Then he says he'll take smoking privileges away when the Union wins.....somewhere baloney.

DESPERATE MEN DO DESPERATE THINGS.....AND TED AUER IS SURE THE MAN OF THE "AUER".....

You deserve more consideration as a Liberty Coach employee than this "bogeyman" business being spread around by Auer.....you would think by his actions that the end of the world is here when we vote our Union in at Liberty.....

Could it be that Ted Auer has something to hide???? We'll see.

In the meantime, let's really get to know our rights.....present your questions to your Organizing Committee members.....GET THE FACTS!

SPECIAL NOTE: Any employee who signs an IUE card before next Friday will be a Charter Member of the Union and will not be required to pay the Initiation Fee....

BEST COPY

from the original

Sign your card today.....and....VOTE "YES" ON OCTOBER 28th.....

\*\*\*\*\*

Issued by your Organizing Committee

Jerry Fletcher, Jim Scott, Dave Wright, Fred Personette, Joe Geiger,  
Morrie Fidler, Willis Newby, Ron Heffner, Craig Baker, Gerald Baker,  
Duane Maynard, Martin Graff, Jerry Lumadue

\*\*\*

## International Union of Electrical, Radio and Machine Workers

Affiliated with the American Federation of Labor & the Congress of Industrial Organizations

702 W. Jefferson St.



Fort Wayne, Indiana 46804

743-7307 OR 743-7303

PAUL JENNINGS, PRESIDENT

GEORGE COLLINS, SECRETARY-TREASURER

WILLIAM WRIGHT, VICE PRESIDENT

October 21, 1966

Mr. Edward Hussey, President  
Liberty Coach Company, Inc.  
Syracuse, Indiana

Dear Mr. Hussey:

During recent weeks, I have had the privilege of assisting Liberty Coach employees in their effort to form their own IUE Local Union, and, as you know, a secret ballot election will be conducted among the employees on October 28, 1966. I have noted through this time that your employees, generally, have respect toward you, both as an individual and as President of Liberty Coach Company.

It is in recognition of this respect that I am taking this opportunity to bring to your personal attention, a most serious situation being created by your Plant Superintendent, Mr. Ted Auer. The recent actions and remarks attributed to Mr. Auer, are not only damaging your personal integrity in the eyes of the employees, but constitute grounds for unfair labor practice charges to be filed against the Company.

As you know, Mr. Hussey, the National Labor Relations Act not only guarantees your employees the right to organize and join a Union, but also forbids Mr. Auer, or other company representatives, "to interfere with, restrain, or coerce employees in the exercise of these rights....." More specifically, 8 (a) 1 of the Law forbids Mr. Auer to engage in activities against your employees, such as:

1. Threatening to close-down the plant if the Union wins the election.
2. Threatening to take away the "Christmas Bonus," and any other wages and benefits, if the employees join or vote for the Union.
3. Questioning employees about their Union activities in such a manner as to restrain or coerce the employees.
4. Spying on Union meetings, or pretending to spy.
5. Granting wage increases, deliberately timed to discourage employees from forming or joining the Union.

Evidence, submitted to me yesterday by Liberty Coach employees, substantiates the fact that Mr. Auer has used "fear tactics," such as threatening to close-down the plant, and to take away the "Christmas Bonus," and other benefits if your employees vote for the Union. His manipulation of the production bonus, since the Union filed the Petition for an election, is tantamount to "buying votes against the Union," and this action, also, could well be an unfair labor practice charge.

I am sure you join with me, in wanting your employees to cast their vote on October 26, 1966, in an atmosphere of truth, facts and common sense, and not influenced by the untruths, distortion and fear being generated by Mr. Auer. To this end, and in the interest of fair play to all of your employees, I call upon you, as President of the Company, to repudiate this activity attributed to the Plant Superintendent, and to reassure your employees that a vote for the Union will not result in the plant being shut-down, or in the loss of any present wages and benefits, which the employees now receive.

In view of the election being only a few days away, I would urge you to give such reassurance to all Liberty Coach employees through a letter to their homes, over your signature, or through the use of the plant's bulletin boards.

Thank you for your immediate attention and cooperation in this serious matter.

Very truly yours,



Ted Nolan  
International Representative  
IUE-AFL-CIO

TN/ah  
opeiu 325 afl-cio  
SPECIAL DELIVERY--  
RETURN RECEIPT REQUESTED

CC: File  
Copies to all Liberty Coach employees

\*\*\*

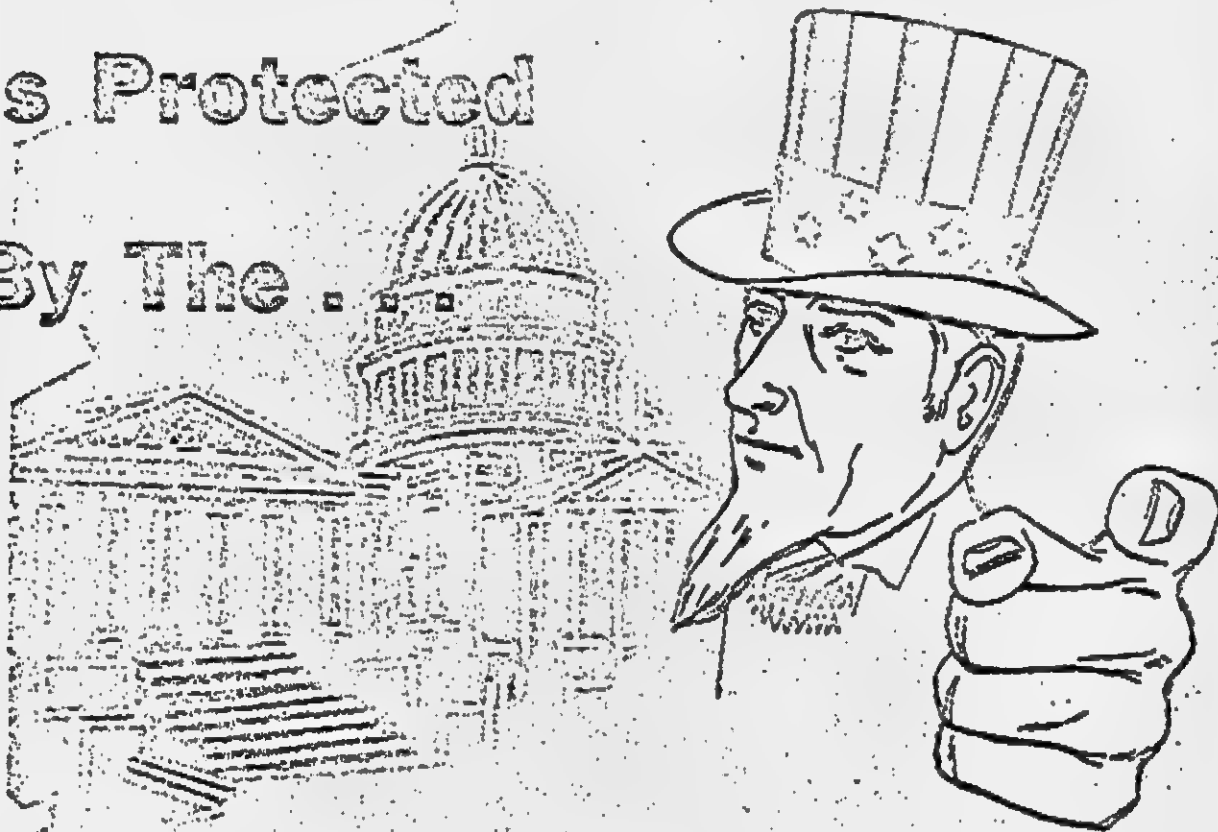
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Your Right to ORGANIZE

Is Protected

By The



U. S. GOVERNMENT

## This is the LAW

"Employees shall have the right to self-organization, to form, to join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and

to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

—Sec. 7, Nat'l Labor Relations Act.

\*\*\*

# The Boss Is Breaking THE LAW!

If He

Does Any

Of These Things



- Asks if you have joined the union.
- Asks if you have been to union meetings.
- Threatens to close the plant down if you get a union. Most likely these threats come in the form of hints from some foreman. The foreman may say: "If the union comes in here, we will close the plant down and you will be out of a job."
- Threatens to withhold benefits you now have if you get a union. It is against the law for an employer or one of his foremen to say: "We were going to give a wage increase but if you mess with this union, you won't get anything."
- Threatens to fire anyone who joins the union or attends union meetings. Most times these threats are in the form of a hint from some foreman. It is illegal for him to tell a worker: "If you keep messing with the union you may get in trouble." Or, "Do you think more of the union than you do your job?"
- Transfers the active union men to less desirable jobs in the plant, or cuts wages as a penalty for union activity.
- Threatens to take away any benefits you now have if you get a union. It is illegal for a boss to tell a worker: "If you get a union in here, the company doesn't have to continue your bonus or your vacation."

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from the original

## IUE-AFL-CIO Protects Your Job and Your Pay When You Work as a Volunteer Organizer

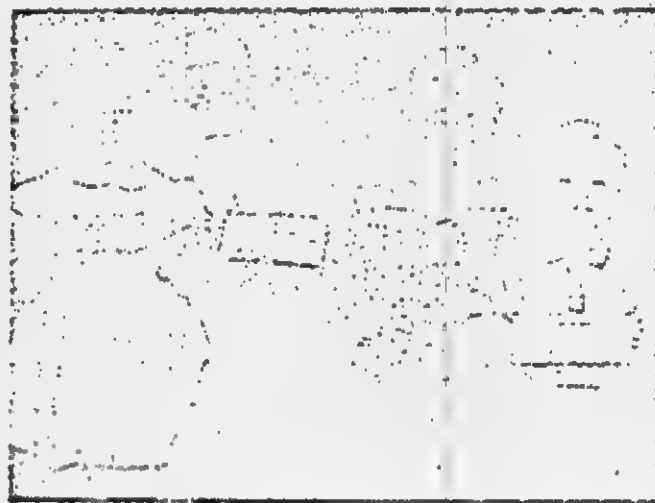
### \$63,690 For IUE Supporters

Checks totalling \$63,690 in back pay are waved by seven of 12 IUE supporters who were unlawfully fired by the Putnam Tool Co. for union activity. IUE-AFL-CIO fought and won their case through the NLRB and the U. S. Court of Appeals. Seated are (l. to r.) Mr. and Mrs. Richard Masters and Mr. and Mrs. David Kendall. Standing (same order) are Saverio Franz, IUE Representative Bob Klingensmith, Lorenzo Julio, Ernest Provost, Gus Stauropoulos and Frank Zombo.



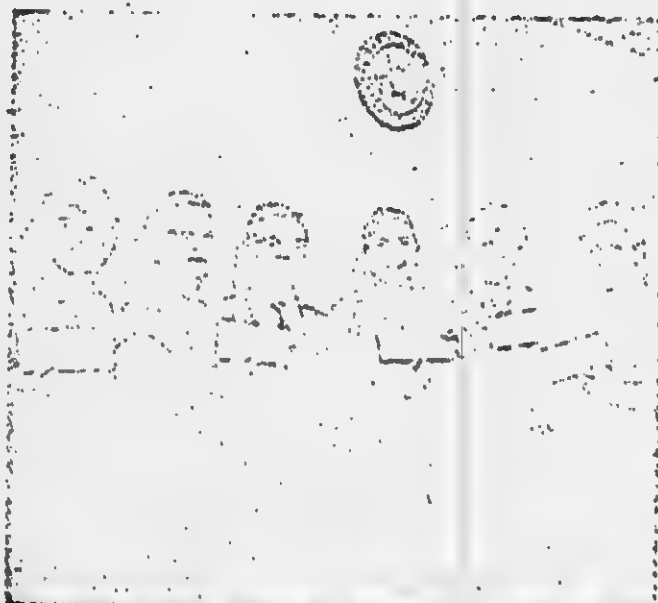
### Committeeman Wins \$6,012.26 Plus Promotion

James Earl Schultz was a member of the IUE Committee during an organizing campaign at GE's Hendersonville, N. C. plant. GE was forced to rehire him, pay \$6,012.26 back pay and grant a promotion he would have obtained during the period he was unlawfully discharged. The National Labor Relation Board made the ruling after IUE filed unfair labor practice charges against GE. He and his happy family are shown here holding the back pay checks.



### Uncle Sam Orders Full Back Pay

Shown holding checks for back pay totalling more than \$2,500 from Heat Timer Corp., New York City, and receiving congratulations from James Trenz, IUE Local 463 President (third from left) are Minnie La Rocca (\$20.00); Mrs. Leo Vetere (\$152.40); Marie Giardina (\$1,095); Hippolito Aponie (\$81.60) and Carmella Giardina (\$1,095). The awards ordered by the NLRB. represent earnings lost when they were laid off for union activity when the production, maintenance and service unit was organized. Not in photo, Marquett O'Brien (\$49.55).



# QUESTIONS AND ANSWERS . . .

So That You May Better Understand This Law,  
Here Are Some Questions and Answers About  
What You May and May Not Do:



If, during lunch time, on breaks or before or after work time I think I have a chance to sign up one of the other workers, can I sign him up on company property?

YES



Can I talk about union matters openly with other workers on breaks, lunch time, or before and after working hours?

A:

YES



Can we get together and talk about the Union or sign people up during working hours?

NO



Can I distribute union leaflets on company property?

A:

Yes, but only in non-working areas such as rest rooms, parking lots, and lunch rooms.



If another worker comes to my job during working hours and asks me to sign him up in the union, what should I do about it?

Tell him you will be glad to sign him at lunch, at breaktime or after work.



Should I obey company rules?

A:

Yes, but when you are organized, you will help make the rules.



INTERNATIONAL UNION OF ELECTRICAL,  
RADIO AND MACHINE WORKERS, AFL-CIO  
1125 Sixteenth Street, N. W., Washington, D. C. 20036

October 26, 1966

# NEWS BULLETIN

-- for all employees  
of Liberty Coach

LAST FRIDAY, OCTOBER 21st, WAS THE DAY FOR WEATHERHEAD WORKERS IN SYRACUSE ----- THEY VOTED BY A 6 to 1 MAJORITY TO BECOME PART OF THE AFL-CIO FAMILY !!! OVER 300 WORKERS AT WEATHERHEAD WILL NOW BENEFIT FROM THE PROTECTION OF THEIR UNION AND A UNION CONTRACT.

THIS FRIDAY, OCTOBER 28th, IS THE DAY FOR US AT LIBERTY COACH ----- WE, TOO, WILL JOIN THE AFL-CIO FAMILY WHEN WE VOTE "YES" FOR OUR UNION ----- IUE-AFL-CIO!!!

We admit that a comfortable majority of Liberty Coach workers have already signed IUE cards.....and the votes of that majority will put us over the top in the NLRB Election.....

BUT.....

Those of you who have not yet joined IUE are urged to SIGN TODAY and vote "YES" for YOUR UNION on Friday.....and build our majority to a greater than 6 to 1 margin!!!

We all realize that a BIG majority vote for IUE will give us a STRONG voice at the bargaining table.....AND A STRONG CONTRACT.

Your vote for IUE is important.....a strong contract is, too ---

LET'S LOOK AT A STRONG CONTRACT.....just what we need at Liberty.

PENSION PLAN -- is it right for an "old-timer" with 20 or 25 years of service to be retired at Liberty with NOTHING? Most of us know Oscar Haney --- he has given 20 years of his life to Liberty, but Liberty gives him NO PENSION!!! Gene Hill is approaching retirement....NO PENSION!!! These fellows, and others in our plant, could retire with security with a Union-negotiated pension of \$60 to \$120 per month income, in addition to Social Sec.

SENIORITY -- do we have seniority rights at Liberty??? We all know the answer to that one! When lay-offs come, is there any guarantee now that our years of service will be honored by the Company.....of course not. And does seniority

always decide who gets the job promotion.....not here at Liberty. A Union Contract will GUARANTEE YOUR SENIORITY.

**JOB POSTING** -- When an "open" job exists, or a higher-paying job, does the Company post that job so that anyone in the plant can bid for it.....and be selected on the basis of seniority? A Union Contract can make this a reality.

**REMEMBER WHEN SOME OF US WERE TOLD THAT WE WOULD BE FIRED IF WE TOOK THE SECOND WEEK OF VACATION THAT WE HAD EARNED???** There is none of this monkey-business in a strong contract.

**GRIEVANCE AND ARBITRATION PROCEDURE** -- When the Company treats us unfairly, what can we, as individuals, really do about it???? If we complain we stand the chance of being fired....but, even if we don't get canned, THE BOSS ALWAYS HAS THE LAST SAY! Not so with a Union Contract.....every worker can then call for his Union Steward....and a grievance is filed.....and the grievance can be processed, if necessary, through to the American Arbitration Association.....AND THE ARBITRATOR, NOT THE BOSS, HAS THE LAST SAY....and his "say" GOES!

Oh, Yes, A UNION CONTRACT CAN DO MANY THINGS FOR US AT LIBERTY....it can certainly straighten up the WEEKLY BONUS.....we are confident that none of you are fooled about the EXTRA bonus now being paid. BEFORE WE ASKED FOR A UNION ELECTION, THE BONUS WAS AVERAGING \$29 or \$30...SINCE SEPT. 12th, THE AVERAGE IS \$50....LET'S KEEP IT THAT WAY...VOTE "YES".

Distributed Oct. 26, 1966

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# YOU ARE THE UNION!

We have talked about the importance of a Union Contract....and how it can provide you with protection for wages, hours, and other conditions of employment. That Union Contract will spell out YOUR RIGHTS....as an employee at Liberty Coach.

But another document is equally important.....one that spells out YOUR RIGHTS....as a member of IUE-AFL-CIO.

IUE is a democratic Union.....YOU, as a member, have the right to guide the affairs and decisions of your Union with your voice and vote.....and these rights are spelled out in our Union Constitution!....because, in IUE.....YOU ARE THE UNION!

Shortly after we vote our Union in this Friday, a Membership Meeting will be called.....EVERY MEMBER will be invited to attend.....and EVERY MEMBER will have a voice and vote. We will discuss several important matters, including the plans for nominating and electing our Union Officers, Negotiating Committee, and Department Stewards...

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from the original

also the time and date for regular monthly Membership Meetings...and dues.....initiation fee.....we will discuss in some detail the plans which must be made to begin collective bargaining with the Company.

YOU ARE THE UNION.....AND YOU WILL HELP MAKE THESE DECISIONS!!!!!!

#### HOW WILL YOU ELECT OFFICERS???????

1. All members will be notified of the meeting at which g nominations for office are to be made.
2. All members will be eligible to nominate, to be nominated, and to accept nomination for office.
3. You will select an Election Committee to supervise and conduct the election.
4. All members will receive, by mail, a notice setting forth the names of nominees, time, date, and place of the election. This notice will be mailed at least 15 days prior to voting.
5. All members will be eligible to vote.....BY SECRET BALLOT.

YOU ARE THE UNION.....AND YOU WILL CHOOSE YOUR OFFICERS!!!

#### HOW MUCH ARE THE DUES IN IUE?????

Monthly dues are \$4.00.....this was established by a vote which represented the total membership of the International Union.... again pointing out that....in IUE....the members run the Union.

By the way, NO IUE MEMBER AT LIBERTY COACH WILL PAY ANY DUES UNTIL A UNION CONTRACT IS SIGNED AND RATIFIED BY YOU....

YOUR VOTE will establish the Initiation Fee of our Union, but in no event can it be set higher than \$10.

IUE IS A GOOD UNION.....IT BELONGS TO YOU.....VOTE "YES" TOMORROW

\*\*\*\*\*

DID YOU KNOW.....In 1964 (Jan. 1 to Labor Day), at \$2.20 per hour, the average hourly earnings, with bonus, was \$3.24 for an employe, who worked 1729 hours.....

AND.....in 1966, for the same period, and for almost an identical number of hours (1716).....AND WITH A 10% WAGE INCREASE IN MARCH.....the average hourly earnings dropped down to \$3.08.....A LOSS OF 16% PER HOUR.

The Company sure got that "increase" back.....and then some.....

And did you know that Union Contracts call for "average hourly rate" to be paid on VACATION and HOLIDAYS? WHO SAID WE DON'T NEED A UNION

206

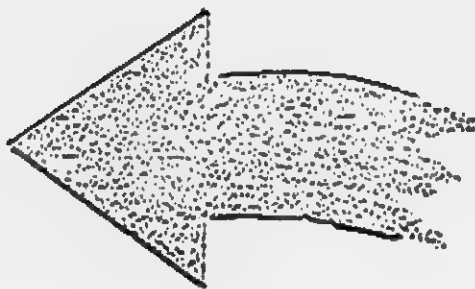
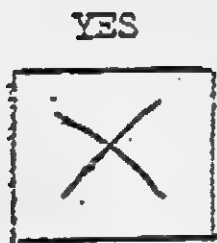
# THANK YOU

As members of the Liberty Coach Organizing Committee, and also on behalf of the International Representatives of IUE-AFL-CIO who have helped us in this campaign, we wish to express our appreciation to all Liberty Coach workers for your courtesy and consideration.

We are grateful for the support and encouragement given by you in the past few weeks leading up to the NLRB Election today. We look forward to the balloting with confidence that a great majority of you will vote for the Union.

Thank you, again.

Your IUE-AFL-CIO -- Liberty  
Coach Organizing Committee



VOTE  
YES

[Caption Omitted in Printing]

EMPLOYER'S EXCEPTIONS TO  
REPORT ON CHALLENGED BALLOTS  
AND  
OBJECTIONS TO CONDUCT  
AFFECTING THE RESULTS OF ELECTION  
AND  
RECOMMENDATIONS TO THE BOARD

The Employer, Liberty Coach Company, Inc., files the following protective exceptions to the Regional Director's Recommendations dated December 29, 1966, which exceptions are to be considered only if the Board does not follow the Regional Director's Recommendation with respect to the sustaining of the two challenged ballots, and only then if the challenged ballots would alter the results of the election in favor of the Petitioner Union:

As to the Employer's objections set forth on pages 8, 9, and 10 of the Regional Director's report, the Regional Director concluded, in part, that "Exhibits 1 through 7 are not objectionable on their face \* \* \* and assuming that they were, the Employer had ample time to reply to the matters it now deems objectionable." The Employer incorporates its letter to the Regional Director of December 15, 1966, together with its other correspondence and transcripts of sworn testimony, in response to this assertion by the Regional Director. The Employer submits that the record demonstrates that, in addition to being objectionable on their face, the statements therein are grossly untrue,

deliberately made with the purpose of illegally influencing the election, and did so.

All of the Employer's objections are supported and uncontradicted by the evidence and each act objected to unduly and illegally influenced the election.

The premise by the Regional Director that even assuming that Exhibits 1 through 7 were objectionable, that the Employer had ample time to reply to the matters, is completely unfounded and without regard to the practical nature and requirements of a response. Certainly, as was pointed out in prior correspondence to the Regional Director, these accusations were not made by Liberty employees, and the sworn testimony amply demonstrates that fact. Yet, they were published under the guise that they were issued by employees of Liberty Coach. Moreover, the scope of the charges issued but several days prior to the election was such that they could neither have been investigated or properly treated with by the Employer in any manner of convincing rebuttal that would serve to eliminate their highly prejudicial affect prior to the election.

The Employer is not objecting to the Recommendation of the Regional Director with respect to the challenged ballots of Richard Timmons and Max Kleinknight. The Employer would point out that the evidence does support the Employer's contentions also that the mechanics constitute management, clerical, confidential and security people in their relationship to Liberty, and they so testify.

As noted hereinabove, the Employer's Exceptions to the Recommendations to the Board in the Regional Director's Report are merely protective in nature, and the Board need not consider those Exceptions in the event that it accepts the final Recommendation of the Regional Director that the challenges to the

ballots of Timmons and Kleinknight be sustained and an appropriate certification of results issued.

There are practical and unusual limitations to the Employer submitting copies of evidence to the Board herein. The Employer procured and paid for 1,200 pages of transcript of sworn testimony of its employees and supervisors. The original of this transcript was filed with the Regional Director, together with substantial documentation including copies of pertinent books and records of the Employer. The volume of evidence is such as to make it impossible for the Employer to resubmit this material to the Board.

The Employer submits that all of this testimony, without exception, demonstrates that this Employer treated its employees and the Union in the utmost good faith and fairness in election and pre-election periods. That the Employer's employees, including union organizers, have so testified without qualification.

It is obvious from the sworn testimony of all concerned that none of the accusations leveled against the Employer and its plant supervisor were true, and these charges contained in Exhibits 1 to 7 went far beyond exaggerated campaign statements. They, in fact, charged the Employer with gross cheating of its employees on an economic basis and of engaging in illegal and morally reprehensible conduct against the union and its employees.

In the event that the Board does not uphold the Recommendations of the Regional Director with regard to challenged ballots, it is respectfully requested that the Board direct the Regional Director to furnish the Board with all

affidavits, exhibits, documentation and correspondence and consider such evidence in support of the Employer's objections.

The Employer's objection with respect to unlawful inducement is patently correct.

Dated: January 5, 1967

[Subscription Omitted in Printing]



## NATIONAL LABOR RELATIONS BOARD

Washington 25, D.C.

February 3, 1967

Re: Liberty Coach Company, Inc.  
Case No. 25-RC-3532

John F. Shea, Esquire  
Shea & Shea  
3040 Guardian Building  
Detroit, Michigan 48226

Dear Mr. Shea:

This will acknowledge receipt of your letter of January 20, 1967, enclosing on behalf of the Employer a brief in support of the exceptions to the Regional Director's Report on Objections in the above proceeding.

Section 102.69 of the Board's Rules and Regulations provide for filing of exceptions only, and no provision is made under this section for filing any further briefs after the date for filing exceptions has expired. However, if your brief in support of the exceptions had been received on or before the expiration date for filing exceptions it would have been entertained by the Board. The Employer's exceptions and the Petitioner's exceptions and supporting brief were timely received and are now under consideration by the Board. Therefore, to accept a brief in support of your exceptions at this date would only delay the Board's decision.

Accordingly, your brief in support of the exceptions must be rejected, and all copies are returned herewith, with the exception of one which has been retained for the Board's informal file.

Very truly yours,

Howard W. Meach  
Associate Executive Secretary

cc: NLRB - Region 25  
Mr. Irving Abramson

SHEA &amp; SHEA

February 13, 1967

Howard W. Kleeb  
Associate Executive Secretary  
National Labor Relations Board  
Washington, D.C. 20570

In re: Liberty Coach Company, Inc.  
Case No. 25-RC-3332

Dear Mr. Kleeb:

Your letter of February 8, 1967 was received with considerable disappointment on my part.

Therein you quoted Section 102.69 of the Board's Rules and Regulations with respect to the filing of exceptions only. I was cognizant that the Rules and Regulations did not provide for briefs with respect to exceptions. Consequently, the Employer did not file a brief. However, the Union did and a copy of said brief was delivered to the Employer subsequent to the time that exceptions were due to be filed with the Board. The Union's brief was not returned. Moreover, no request was made for a brief on the part of the Employer.

Accordingly, the Employer is left in the position where the Board accepted a brief by the Union subsequent to the time when the Employer's exceptions were filed with the Board and prior to the time that a copy was delivered to the Employer. No one could suggest in the subject situation that the Employer or its counsel had indicated, in any way, a lack of diligence or a lack of cooperation with the National Labor Relations Board. Indeed, the Employer had exceptional expense, time and effort of its staff and of its attorneys and made sure that the National Labor Relations Board's investigation of this matter, through the Regional Director, was one of the most complete ever submitted to the Board. It should be noted in this regard that the Employer took sworn testimony from every individual who, either directly or remotely, would have pertinent and informative information concerning the premises. That sworn testimony was taken without any preparation or any prior counseling or questioning of the employees involved, in order that it could be accomplished with the utmost fairness and openness to the Union and to the National Labor Relations Board. The testimony was taken by the court reporter serving the United States District Court at South Bend, Indiana. The transcript was typed and submitted directly by the court reporter to the Regional Director. The entire transcript comprised 1,227 pages. Records and summaries of the

company were made and submitted at substantial expense of time and energy and monies; and, I might add, this firm worked night and day in an effort to comply with time requirements of the Regional Director in this connection.

The brief we submitted was founded entirely on a complete and unchallenged record factually. It was respectfully submitted to the Board in the belief that it would be of aid and assistance and accomodation to the honorable members of the Board in the premises. Certainly, if a brief had not been submitted on the part of the Union and had not been accepted by the National Labor Relations Board, the Employer would have no point. But where a brief by the Union was submitted without the request of the Board and not in compliance with any requirement of the Board and where no time limit existed for briefs, it is difficult for the Employer to acquiesce in the position that the petitioner Union filed a timely brief and the Employer's was not timely.

We respectfully submit that the purpose of our brief was not to delay the Board in its decision, but was to aid and assist it in its review of the premises and, hopefully, to conserve the Board's time.

We believe the brief was fairly and accurately written and was submitted within one month from the date of the decision. It should be noted that during a substantial portion of the month subsequent to the decision the Employer was involved in framing its exceptions. Pointedly, the Employer submits that the brief filed by the Union has no support of the facts in the case and that is clearly evident in the Employer's brief as submitted.

Very truly yours,

SHEA & SHEA  
James F. Shea

JFS/mes



# NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

February 17, 1967

Re: Liberty Coach Company, Inc.  
Case No. 25-RC-3332

Mr. James F. Shea  
Shea & Shea  
3040 Guardian Building  
Detroit, Michigan 48226

Dear Mr. Shea:

In reply to your letter of February 13, 1967, I can understand your disappointment arising out of our rejection of your brief. I believe your position is based on a misconstruction of our rules and regulations. Your letter indicates that the Union's brief was filed subsequent to the time that exceptions were due to be filed. I respectfully point out that this statement is in error under our construction of the rules. Under Section 102.69 (c) exceptions may be filed within 10 days from the date of the issuance of the report. However, this section must be read together with Section 102.114 (a), which says in part "Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or other paper upon him, and the notice or paper is served on him by mail or by telegraph, 3 days shall be added to the prescribed period: . . ."

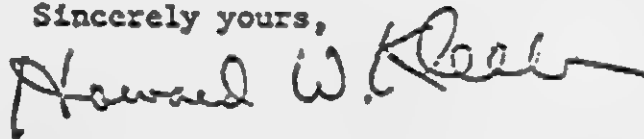
Therefore, the above rule permitted both parties to file exceptions up to and including January 11, 1967, or 13 days after the Regional Director's report was issued. We received petitioner's exceptions and brief on January 11, 1967, and under our rules, this was timely filing. Obviously, you are not familiar with this rule, which I am sure you will agree, explains your misunderstanding.

I should also point out that although Section 102.69 refers only to "exceptions", it has been the practice of some lawyers to file a brief together with their exceptions, and we do not reject such briefs, but as a matter of course accept them without question.

We sincerely regret what we consider to be a misunderstanding arising out of the application of our rules. While I realize that it is small comfort to you at this time, I can assure you that the record in this case and your exceptions, together with the Union's exceptions and brief will be thoroughly reviewed and the ultimate decision of the Board will be based on the facts in the case.

For your future consideration, in the event you file exceptions, we will also accept a brief with the exceptions and if additional time appears to be needed, we will entertain a request for an extension of time to file as set forth under Section 102.69 (c).

Sincerely yours,



Howard W. KleeB  
Associate Executive Secretary

- SHEA & SHEA

February 20, 1967

Mr. Howard W. KleeB  
Associate Executive Secretary  
National Labor Relations Board  
Washington, D. C. 20570

In re: Liberty Coach Company, Inc.  
Case No. 25-RC-3332

Dear Mr. KleeB:

With reference to your letter of February 17, 1967, I was very familiar with the three day additional time for filing exceptions where mail service occurred. What I stated in my letter was that the Union's brief was received by the Employer and its attorneys subsequent to the date for filing exceptions. Consequently, we had no notice of a brief being filed on the part of the Union until after expiration of time for the filing of exceptions.

You point out in the third paragraph of your letter the practice of some attorneys of filing briefs, together with exceptions, and the fact that the National Labor Relations Board does not accept briefs after the exception date has expired. My analysis of the situation, as I respectfully submitted to the Board, was that an unpublished and unwritten policy of the Board operates so that certain attorneys having knowledge of the unwritten policy and rules have the advantage of a brief for their client; whereas, the rule operates to deny equal treatment to those who must rely upon promulgated and published rulings and decisions.

I respectfully submit, in view of the limited time requirements, which I know are a matter of necessity in National Labor Relations Board matters

that the Board publish the ruling that briefs will be accepted with the filing of exceptions, but not thereafter.

I thank you for your courteous response.

Very truly yours,

SHEA & SHEA  
James F. Shea

JFS/mes

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[Caption Omitted in Printing]

#### DECISION AND DIRECTION

Pursuant to a Stipulation for Certification upon Consent Election approved on October 11, 1966, an election by secret ballot was conducted on October 28, 1966, under the direction and supervision of the Acting Regional Director for Region 25, among the employees in the unit described below. After the election the parties were furnished with a tally of ballots which showed that of approximately 197 eligible voters, 190 cast ballots, of which 94 were for, and 94 against the Petitioner, and 2 were challenged. The challenged ballots were sufficient in number to affect the results of the election. Both the Petitioner and the Employer filed timely objections to the election.

In accordance with the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, the Acting Regional Director conducted an investigation and, on December 29, 1966, issued and duly served upon the parties his Report on Challenged Ballots and Objections to Conduct Affecting the Results of the Election and Recommendations to the National Labor Relations Board in which he recommended that all objections of the Petitioner and Employer be overruled and that the challenges to the two ballots be sustained and an appropriate Certification of Results issue.

On January 9, 1966, the Employer filed exceptions to the Acting Regional Director's Report. On January 11 the Petitioner filed exceptions and a brief in support of its exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Board has delegated its powers in connection with this case to a three-member panel.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
2. The labor organization involved claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
4. The parties stipulated, and we find, that all production and maintenance employees of the Employer at its Syracuse, Indiana, establishment; but excluding all office clerical employees, all mobile home haulaway truck-drivers, guards, and all professional employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act.
5. The Board has considered the Acting Regional Director's report, the exceptions, and the briefs, and makes the following findings:

The Acting Regional Director found that the two employees whose ballots were challenged, Timmons and Kleinknight, have work and interests which are separate and distinct from those of the production and maintenance employees and should be excluded from the unit found appropriate. We do not agree. We find that it was the expressed intention of the parties to exclude only those employees specifically designated therein, and to include

all others.<sup>1</sup> The unit in the Union's original petition was described as including "All production and maintenance employees at the Company's plant in Syracuse, Indiana", and excluding "All truckdrivers, guards, professional, technical, and salaried employees, and supervisors as defined in the Act." [Emphasis supplied.] In the Stipulation, "plant" was changed to "establishment", and "all truckdrivers" became "all mobile home haulaway truckdrivers". These changes are indicative of an intent to cover the entire business unit of the Employer and to exclude only those narrower categories of employees so specified. That "production and maintenance employees" is meant as a general term is evidenced by the inclusion of local truckdrivers within the unit. We find that the inclusion in the unit of Timmons and Kleinknight, who are garage mechanics at the Employer's building about three quarters of a mile from the main plant, is not inherently inappropriate as a matter of law and that they should be included in the unit under the terms of the parties' stipulation.

As we find that these two employees should be included in the unit we overrule the challenges to their ballots, and we shall direct that their ballots be opened and counted and that a revised tally of ballots be prepared.

The Acting Regional Director recommended overruling all objections of the Employer and Petitioner. We adopt those findings and overrule all exceptions as lacking in merit, except those of Petitioner which relate to the exclusion of the ballots of Timmons and Kleinknight.

#### DIRECTION

IT IS HEREBY DIRECTED that the Regional Director for Region 25 shall, within 10 days from the date of this decision, open and count the ballots of Richard Timmons and Max Kleinknight and thereafter prepare and cause to

<sup>1</sup>Westinghouse Electric Corporation, 160 NLRB No. 106.

be served upon the parties a revised tally of ballots including therein the count of said ballots, and take such further steps as may be necessary in accordance with the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended.

Dated, Washington, D. C. April 24, 1967.

Frank W. McCulloch, Chairman

John H. Fanning, Member

Gerald A. Brown, Member

NATIONAL LABOR RELATIONS BOARD

(Seal)

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EMPLOYER'S MOTION AND PETITION FOR RECONSIDERATION  
AND REVIEW OF DECISION AND DIRECTION DATED APRIL 24,  
1967 AND REQUEST FOR HEARING AND A DIRECTION TO THE  
REGIONAL DIRECTOR TO FURNISH THE NATIONAL LABOR  
RELATIONS BOARD WITH A COMPLETE RECORD

Now comes the Employer, upon this petition, and moves the National Labor Relations Board to reconsider and review its decision and direction dated April 24, 1967 and to order the Regional Director to furnish the National Labor Relations Board with the complete record and to order a hearing herein; and, as grounds therefore, states as follows:

A. The Board's decision and direction herein as to the Employer's objections and challenges was rendered completely contrary to the uncontested preponderance of evidence submitted by the Employer, and a multitude of factual issues were resolved by the Board without reference to the facts and casually disposed of on an erroneous proposition of law which required a

factual determination, which was never made.

B. The Board's decision and direction herein was arbitrary and capricious and contrary to the requirements of due process in administrative proceedings because:

1. The Board was considering issues requiring a factual determination and the Board was denied the factual basis for a determination of due process, as a consequence of not having before it the record as required by law and reason for a determination of a just and reasonable decision in the premises. The Employer, commencing with the initial investigation by the Regional Director's office, had sought earnestly and sincerely to compensate for the failures of the investigating agents of the Board by taking sworn affidavits and testimony of numerous witnesses concerning the factual issues involved herein and had furnished the Regional Director with hundreds of pages of transcript proving, beyond a shadow of a doubt, the exceptions, objections and challenges of the Employer. The Employer, in its exceptions, referred repeatedly to the fact that the 1,200 pages of transcript of sworn testimony of its employees and supervisors completely and unequivocally demonstrated that the exceptions and objections of the Employer were based upon solid, uncontested facts; and the record made and submitted by the Employer to the Regional Director was incorporated by reference in the Employer's exceptions and objections. It is inconceivable that, where the record so completely vindicates the Employer's fair play and scrupulous adherence to just principles

and conduct in a labor matter and at the same time demonstrates the corrupt methods employed by the Petitioner Union, the National Labor Relations Board would issue a decision and direction without reviewing or having in its possession the record so established. The Regional Director refused to forward the entire record in this case and the Board, in effect, refused to order that record up before it.

C. The casualness with which the Board has turned its back upon the administrative requirements in this case is further evidenced by the great effort of the Employer to file its brief herein and the rejection of that brief summarily and without reason by the Board on the basis of some unwritten and unpublished internal rule of the Board. The premise given for the operation of this "unpublished rule" is that the acceptance of a brief on the part of the Employer filed within a month of the recommendation of the Regional Director would cause unnecessary delay in the Board's decision and direction. The fact is that the Board never began to consider this matter until many months subsequent to the submission of this brief and that the Board accepted a brief from the Petitioner and referred to that brief in its decision and direction; and Petitioner's brief, in fact, contained factual argumentation that was completely unsupported and contradicted by the evidence which should have been before the Board, but which the Board did not possess because the record in this case was never before the Board.

D. It is obvious factual issues exist in this case and it is obvious that the Employer's exceptions contradicted the recommendations and findings of the Regional Director. Yet, the Board attempted to render a factual decision.

in highly contested factual areas premised upon recommendations by the Regional Director that were incomplete and contrary to the record and in the absence of the record being before the Board.

E. That the record in this case, if it had been before the Board, would have demonstrated the correctness of the Employer's position as to all of its exceptions and as to its challenges and, especially, that the so-called mechanics, in reality, by nature of their duties and responsibilities, constituted management, clerical, confidential and security people in their relationship to the Employer, as they themselves testified. Aside from the 1,200 pages of transcript of sworn testimony taken and paid for and submitted by the Employer, hundreds of pages of other documentary evidence was prepared and submitted by the Employer. The expense involved in this effort by the Employer approximated \$8,000.00 without reference to any attorney fees; and, yet, this evidence was not submitted or required by the Board as part of the record in this case.

F. The record also demonstrates that this unusual expense and burden placed upon this Employer was required on its part because the Regional Director, in its investigatory efforts, did not take the testimony or affidavits requested by the Employer and, yet, required the Employer to furnish particular employees for over a week period to the Regional Director's investigator. The investigator repeatedly told the Employer that, as soon as he finished with what he desired, he would go into the material aspects as requested by the Employer. However, the Regional Director ran out of time when it came to the material proofs the Employer knew were involved; and the Employer was forced to continue by itself in obtaining and submitting evidence of the most

germane, material and relevant nature. Another aspect of the Regional Director's investigation was that the investigating agent insisted upon taking hand-written statements from management and employees in a handwriting that was completely illegible and, as a matter of procedure, would talk to them for several hours and only put down several pages amounting to less than five per cent (5%) of what was said and request a signature on these illegible pages. Further, his procedure was to make mistakes in the first page of these pages and then require the witness to initial the correction so that the initialing on the page existed prior to his completion of the page. As an example, he left the word "not" out of an affidavit, which completely changed its meaning, and had the employee sign it; and, when the employee struggled to read it and realized the "not" was left out, he went back to the investigator and the investigator was very embarrassed and said that it was a mistake on his part and he corrected the matter. At this point the Employer had no choice but to furnish a court reporter for the investigator and did so and paid for the transcript, in addition to the transcript of testimony taken and paid for and submitted by the Employer. All of these transcripts are and should have been forwarded as part of the record in this case, but were not.

The Employer earnestly requests that the Board obtain a complete record and review its decision and direction so as to correct and preclude patent administrative errors in this case.

The Employer respectfully submits that, upon a review of the record, the Board will find that the Employer's objections and its challenges and the nature of the so-called mechanics responsibilities and their establishment

will completely and without contradiction support the Employer's position.

It is the Employer's considered belief that a decision against the Employer herein on challenges or objections can find absolutely no support in the record as it exists and that the Board would, upon a review of the record, enter a decision and direction in favor of the Employer both as to challenges and objections. However, the Employer would not object to a hearing, as requested by it on brief and by the Union in exceptions, and believes that a proper, just and fair decision and direction can not be issued under fair administrative procedures against the Employer where the weight of all evidence is in its favor and uncontradicted unless the Board orders a hearing and new evidence is submitted at such a hearing contradicting the uncontroverted record as it now exists.

G. Of prime import, upon the Boards seeking to decide this case in a factual vacuum, is the relative posture of the parties before it as to objections. The position of both parties, Employer and Union, is that there were occurrences and conduct operating during and prior to the election that could only "deprive employees of their free choice of bargaining representative" [Union Exceptions] and "that each act objected to unduly and illegally influenced the election." [Employer Exceptions]. Accordingly, both parties to this election recognize, admit and advance the fact that the election climate at the Syracuse establishment did not permit of a free and fair election and deprived the employees of their freedom of choice. What is more, the testimony of employees submitted to the Board's agent on both parties part is uncontested in this respect. Where the parties differ is the cause or origin of the atmosphere that subverted and made impossible a fair and determinative election. The

Employer submitted monumental evidence proving that the acts and rumors were not only of Union inspiration and creation, but that they were carried out by Union agents acting in a concerted effort to conspire against a free election. This charge by the Employer is not to be considered as Labor-Management invectitude. This Employer has no use for such a dialogue. The charge is true and the Employer proved it. Yet, even so, how could the Board, without a record, without a hearing, and without any review of evidence, administratively decide a free and fair election when both parties have submitted that a free election did not occur and have told the Board why it did not and could not occur? Certainly, under the circumstances, the Board is charged with a duty to make and render a decision on these substantial and material matters founded upon a record and a hearing.

H. The Board has not, in its decision and direction, made a finding that substantial and material issues of fact do not exist in this case; and the posture and positions, exceptions and objections of the parties demonstrate graphically that substantial and material issues of fact do exist. This being so, the Board must decide this case on the record under the authority of Rule 102.62(b) providing for a "determination by the Board of the facts ascertained after such consent election . . . ", as well as the Rules of Federal Administration and fair administrative procedures, and Rule 102.69(e)(1) providing for the Board to order a hearing if exceptions . . . raise substantial and material factual issues. The error of the Board is patent in its opinion where it says it has considered the Acting Regional Director's report, the exceptions and the briefs (sic). This certainly does not constitute a decision upon the evidence

or facts. Further, with reference to challenges, the Acting Regional Director found that the two employees whose ballots were challenged "have work and interests which are separate and distinct from those of production and maintenance employees." Yet, without reference to any evidence or any record, the Board found to the contrary. Certainly, the Union's objections and brief are not evidence; and, as a matter of fact, are contrary to the evidence, but, in any event, do not constitute a foundation for reversing a fact found by the Regional Director without reference to evidence or the complete record.

I. As to the Board's decision as to the stipulated unit, it attempted to determine intent from changes in the stipulation. The Employer's brief, which is incorporated herein by reference and which was twice refused by the Board, demonstrates the true intent of the parties and the reason for the changes. Moreover, in the face of a finding by the Regional Director that the two employees work and interests were separate and distinct and that they should not be included, the Board was hardly in a position to find a contra-intent without reviewing evidence on their work and interests, the nature of which go further than anything else, perhaps to show the intent of the parties.

It is respectfully requested that the Board read our brief, and we re-submit it as an exhibit herein. The very changes the Board seized upon in a sterile atmosphere, untainted by a record or evidence, when reviewed with the attendant circumstances and occurrences, prove that the intent of the parties and the stipulation was not to include the two employees in the stipulated unit. Moreover, they prove that the two employees supervised and managed a completely independent and separate establishment of the Employer. Moreover,

the facts will show that the Union deliberately created this issue at the last minute prior to the election in a manner demonstrating the utmost temerity for the Board, Employer and employees affected.

This case, as the Employer has stated heretofore, does not depend particularly upon the definition of the word "establishment" because the attendant facts and circumstances demonstrate what the stipulation meant to cover. However, "The word 'establishment' in legislative, administrative and commercial practice is treated as meaning a separate unit." A. H. Phillips, Inc. v. Walling (C.A..1st, 1944, 144 F. 2d 102). Congress<sup>used</sup>/the word "establishment", as it is normally used in business and in government, as meaning a distinct physical place of business. The foregoing language is from the United States Supreme Court, A. H. Phillips, Inc. v. Walling (1945, 324 U.S. 496, 65 S. Ct. 807). The entire record, affidavits, testimony, documentary evidence and letters and exhibits and correspondence submitted by all parties with the Regional Director and National Labor Relations Board are incorporated herein by this reference. The following exhibits are submitted herein.

1. Exhibit "A" - Previously submitted and rejected Brief of Employer.
2. Exhibit "B" - Certain correspondence concerning said previously submitted brief.

J. The Employer emphasizes that it does not acquiesce in the violation of the secrecy of the election by a post-election procedure which is contrary to the statutes of the United States guaranteeing a secret election in representation matters. Certainly, to open the ballots of Timmons and Kleinkneight at this point will undoubtedly expose the nature of their particular

vote; and, consequently, for all future time employees of this Employer, as well as employees of other employers within the environs of this Employer, will have no faith in the secrecy of the ballot. To open those ballots at this time will render futile the entire election procedure because the election will then be completely incompatible and contrary to the express provisions of the statute covering said elections. The only proper procedure the Board can follow on eligibility issues is to make its determination of those issues prior to the election, and this could have been done in this case if the Union had not misled both the Employer and the National Labor Relations Board as to these two employees when it knew that both the Regional Director and the Employer would challenge their ballot and, yet, did not forewarn any of the interested parties until thirty minutes prior to balloting.

The Employer specifically requests that these ballots not be open until the Board has decided this petition and motion.

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EMPLOYER'S BRIEF IN SUPPORT OF ITS EXCEPTIONS TO  
REPORT ON CHALLENGED BALLOTS AND OBJECTIONS TO  
CONDUCT AFFECTING THE RESULTS OF ELECTION AND  
RECOMMENDATIONS TO THE BOARD

The Employer, Liberty Coach Company, Inc., at this time desires to note that the Union in its Exceptions and Brief has wandered far afield from the facts in this cause, as they exist, and as they were submitted to the Regional Director.

The Union has sought to reduce the issue on challenged ballots to a matter of semantics and to draw distinctions from the use of the words "establishment" and "plant" that have nothing to do with the intent of the parties or the realities of the circumstances. We are not here dealing with semantics. Pointedly, if we were, the word "establishment" and "plant", or for that matter "factory", lack preciseness or distinction sufficient to determine intent. Actually, the word "establishment" in useage is more often restricted to a situs or location and more often utilized to define the separateness of a unit on a geographical or operation basis. But the Employer does not now believe that the issue herein should be determined in its favor solely because of the more common useage of a term that even so does not have a well-grounded definitive communicative value.

The Union speaks of negotiated intent. In fact, there was no communication, let alone negotiations, prior to the election between the Employer and Union with respect to the term "establishment" and, more importantly, the garage operators or mechanics. The Union's petition excluded truck drivers, and the exclusion was changed so as not to exclude local truck drivers directly supporting manufacturing operations. As to haul-away drivers, the Union, in its petition, framed their ineligibility with other truck drivers in terms of an exclusion and the Employer never conversed with anyone in this regard. The haul-away drivers and certain local truck drivers had some substantial contact with the plant moving coaches around and about and from it; and the Employer's attitude was that clearly eliminating them from the unit, whether

in the general definition or by exclusion or both, was sufficient; and the stipulation was unarguable in this regard.

Insofar as the Employer's intent was concerned, the record demonstrates that it never considered the garage operators as part of the bargaining unit. The record does show that, unknown to the Employer, and prior to the Union filing the petition herein, a Union representative went to the Employer's Village of Wawasee establishment and talked to Timmons and Kneinknight, and that they were told then, in fact, that the Union did not know whether it would include them in the unit petitioned for because it had not decided whether or not to include the haul-away drivers in its petition. Then, when the petition was filed, not only were haul-away drivers excluded, but all truck drivers. Clearly, at that point the Union had no intent that the garage operators Timmons and Kleinknight were part of the bargaining unit as defined in the Union's petition.

These facts, clearly supported without contradiction by sworn testimony, raise two singular questions:

1. When, if ever, did the Union change its intent?
2. Did the Union act in good faith in dealing with the Regional Director and the Employer, or perhaps, framed another way, were the facts known to the Union such as to require it to exercise some degree of diligence in communicating with the Employer and, more importantly, the Regional Director to prevent the very problem now before this Board?

As to the first question, we have the Employer complying in good faith with the request of the Regional Director to furnish two copies of the names

and addresses of all eligible employees so that a copy could be sent to the Union in compliance with the rights of the Union under decision of this Board. The Employer promptly did so and the Union had this list three weeks before the election. Noteably, the names and addresses of Timmons and Kleinknight were not on this list, and yet this list was furnished after the petition was filed, after the stipulation was entered into, and long after the Union, unknown to the Regional Director and the Employer, had told the garage operators that a question existed as to their inclusion so far as the Union was concerned depending on the inclusion or exclusion of the haul-away drivers, who by now were clearly not a part of the bargaining unit.

At this juncture it is clear that the Union had a list from the Employer; it knew the list would be utilized for formulating an eligibility list by the Regional Director; and it had talked with the garage operators about their being in or out of the unit insofar as it was concerned. It knew the Employer did not consider the garage operators as part of the unit. Yet, the Union did nothing, notified no one, and raised no question. Even subsequently the Union took no issue with the fact that an election notice was not posted at the Wawassee establishment.

Only on election day did the Employer or Regional Director hear anything from the Union as to the garage operators and then it was brought up within the hour prior to balloting, and there were some unusual factors here. Bearing in mind that the Union had long since advised these garage operators that its intentions as to them depended on the eligibility of the haul-away drivers, who were now ineligible, we have Mr. Nolan casually bringing up their names less

than an hour before election. He had prior knowledge that their names would not be on the eligibility list, yet, he asked if the Union could, thirty minutes before balloting, go over and tell the garage operators they were eligible to vote. As a matter of fact, the garage operators did not show up at the polling place until long after everyone else had voted.

The foregoing facts are all a matter of documentation and sworn testimony and are completely uncontradicted in the record.

Turning now to the actual substance and nature of the Employer's Wawassee establishment, the uncontradicted record graphically demonstrates that the nomenclature garage mechanic is not correct as to Timmons and Kleinknight; that they were much more than this.

Approximately two years prior to the election, the Employer, who had operated twenty-three years without a garage installation and serviced its trucks through independent garage operations, decided to experiment with a separate garage as part of and as an aid to its distribution system. No one within the Employer's business possessed any knowledge of such an operation either mechanically or otherwise. The record shows that the Employer sought men to operate this establishment that had been truck service managers and of independent responsibility with many, many years of experience. It found such men in Timmons and Kleinknight. The record shows that both men had long histories of being service managers with large dealerships and, just as importantly, both of these men had been owners and operators of their own establishments servicing large trucks; and, indeed, Liberty had dealt with

them as independent businessmen when they were owners and self-employed just prior to their coming with Liberty.

The testimony of these men is that they conducted the garage as an independent operation and that its operation was equivalent to the service department of a substantial dealership. They performed all of the functions of such a service department, including those of service manager and parts manager. They testified they were as independent as in their own business, with but one exception, and that they liked their independence. The one exception in their minds dealt with restrictions on the number of hours of employment a week. However, upon further questioning, it developed that the complaint in this regard was somewhat spurious in that they, and only they, determined their hours of employment, and in that they, at their own discretion, worked oftentimes in excess of eighty hours a week. The Employer only once questioned one of them as to an eighty-seven hour week because of a fear that such a week might endanger their health. The only other limitation in this regard was that the Employer asked them in late fall, after the election, to try to hold to a forty hour week, and this because trucks were not operating and a slack period was involved. Even so, they testified they understood that they could exceed the forty hours where required. The Employer had no way of measuring requirements - these men did. It did feel that their hours probably should have some relationship to truck movement and useage in the winter months.

These men testified they had complete responsibility for substantial Employer equipment and parts at the location, including the security of the location. They had the only key in use. Aside from their duties as service

managers in writing up and diagnosing truck problems, they performed the mechanical work. But, beyond this, they testified to a long list of parts suppliers that they established and pledged the Employer's credit with. Many of these suppliers regularly called upon the garage operators at the garage establishment, or the garage operator went to the supplier's establishment. Purchases of the garage establishment would approach \$40,000.00 a year. Records submitted for 1966 through October 31, 1966 showed Liberty garage invoices totaling \$26,694.68. The garage operators solely determined what was needed, how much should be inventoried, who would supply it, and what price should be paid. They then received the goods and approved payment. They were responsible for all paper work and records at the garage establishment, including work orders, repair orders, purchasing records, handling of shippers and receivers, and maintained, entered and utilized their own perpetual inventory records and stocked their own parts. All of the foregoing is supported by uncontradicted sworn testimony and documentary evidence. Further, from records kept by the mechanics themselves and submitted to the Board, it can be determined their managerial, clerical, purchasing and discretionary duties involved a very substantial portion of their time.

Another singular portion of their testimony that is most pertinent and informative is Mr. Timmons' concept of production workers at the Syracuse establishment where he was testifying:

"they buy their hammer up here and in one day, they know their job. I furnish three thousand dollars worth of tools, and I've got to know what I'm doing." (Transcript, page 927)

Clearly, Mr. Timmons feels no community of interest with a production employee. He feels just the opposite. Elsewhere Mr. Timmons repeatedly testifies as to why he and his employment are separate and apart and without relationship or community with production people. Both Kleinknight and Timmons testified in great detail as to their independent status and that they conducted themselves as if they were running their own independent business. While Clarence Darling, on paper, was their immediate superior, they testified he did not bother them; and both the detail and substance of their testimony is they are their own supervision, knowledgeable far beyond truck mechanics in capability, performance, and status; but, most of all, that they are independent in an independent establishment far removed in thought, word, deed and responsibility from not only Syracuse production employees, but from management, and they want it that way.

How, possibly, in fairness to 197 production workers, could it be determined that their election should be decided by these two independent garage operators? The Union makes the point that to validate their ballots under the circumstances is to give the garage operators the benefit of self-determination status. That's one way of putting it, but what of the 197 production workers who are really concerned and have no community of interest with the garage operators.

The Employer again reiterates that it acted in complete good faith and propriety in the election and that the record so demonstrates and the record will likewise support the Employer's protective objections to the conduct of the Union, and the Union's prohibited influence upon the results of the election.

The record demonstrates graphically that the prevailing and dominant atmosphere at Liberty was not one of fear or restraint, repression, or suppression insofar as its employees were concerned. Indeed, all employees testified to the complete freedom of the election. The Union deliberately tried to spread false information as to rumors and to create rumors, and to convince employees that the Employer was defrauding them as to their pay checks.

Dated: January 30, 1967

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ORDER DENYING MOTION

On April 24, 1967, the Board issued a Decision and Direction in the above-entitled proceeding, in which it adopted the findings, conclusions, and recommendations of the Acting Regional Director for Region 25 that all objections to the election, held on October 23, 1966, be overruled, but disagreed with the Acting Regional Director as to the disposition of the two ballots which had been challenged at the election. The Board ordered that the ballots of employees Timmons and Kleinmiller be opened and counted, and that a revised tally of ballots be prepared and served upon the parties.

Thereafter, on May 1, 1967, the Employer filed a motion for reconsideration of the Board's Decision and Direction and a request for a hearing, attaching thereto, a brief in support of the motion and request.

The Board has fully considered the facts alleged and arguments made in the Employer's motion and brief, and has accepted

the said facts as true for the purposes of the motion. The Board finds that the facts as alleged fail to provide a basis for disturbing the Board's original findings and conclusions, and that the Employer's contentions do not raise material and substantial factual issues which should be resolved at a hearing.

The Board having considered the matter,

IT IS HEREBY ORDERED that the motion by the Employer, Liberty Coach Company, Inc., be, and it hereby is, denied.

IT IS HEREBY DIRECTED that the Regional Director for Region 25 shall forthwith open and count the ballots of Richard Timmons and Max Kleinmicht and thereafter prepare and cause to be served upon the parties a revised tally of ballots including therein, the count of said ballots, and take such further steps as may be necessary in accordance with the National Labor Relations Board Rules and Regulations, and the Statements of Procedure, Series 8, as amended.

Dated, Washington, D. C., May 9, 1967.

By direction of the Board:

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#### REPORT ON OBJECTIONS AND CHALLENGES.

#### AND

#### RECOMMENDATIONS TO THE BOARD

Pursuant to a Stipulation for Certification upon Consent Election approved on October 11, 1966, an election by secret ballot was conducted on October 28, 1966, under the direction and supervision of the Acting Regional Director among certain employees of the Employer. After the election the parties were furnished with a tally of ballots which showed that of approximately 197 eligible voters,

190 cast ballots, of which 94 were for, and 94 against the Petitioner, and 2 were challenged. The challenged ballots were sufficient in number to affect the results of the election. Both the Petitioner and the Employer filed timely objections to the election.

In accordance with the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, the Acting Regional Director conducted an investigation and, on December 29, 1966, issued and duly served upon the parties his Report on Challenged Ballots and Objections to Conduct Affecting the Results of the Election and Recommendations to the National Labor Relations Board in which he recommended that all objections of the Petitioner and Employer be overruled and that the challenges to the two ballots be sustained and an appropriate Certification of Results issue.

On January 9, 1967, the Employer filed exceptions to the Acting Regional Director's Report. On January 11, the Petitioner filed exceptions and a brief in support of its exceptions. On April 24, the Board issued a Decision and Direction, in which it adopted the findings, conclusions and recommendations of the Acting Regional Director that all objections to the election be overruled, but disagreed with the Acting Regional Director as to the disposition of the two challenged ballots and ordered that the ballots of Richard Timmons and Max Kleinknight be opened and counted and that a revised tally of ballots be prepared and served upon the parties.

Thereafter, on May 1, 1967, the Employer filed a motion for reconsideration of the Board's Decision and Direction and a request for a hearing, attaching thereto, a brief in support of the motion and request. On May 9, 1967, the Board denied the Employer's motion and directed the undersigned to open and

count the ballots of Timmons and Kleinknight and to prepare and serve a revised tally of ballots upon the parties.

On May 16, 1967, the ballots of Timmons and Kleinknight were opened in the presence of the parties at the Board's Indianapolis office, whereupon the Employer challenged the validity of both ballots. Thereupon, a revised tally of ballots which counted the opened ballots of Timmons and Kleinknight as challenged ballots and, therefore, showed the same results as the original tally of ballots prepared on October 28, 1966, was prepared and served on the parties. The Employer filed timely objections to the count of the challenged ballots, a copy of which is attached as Exhibit 1, and renewed its objections previously overruled by the Board, herein called the prior objections.

The prior objections having been previously decided, the matter raised by the Employer concerning them is res judicata, and the only relevant issue is the validity of the challenged ballots. It is recommended that the Employer's attempt to revive his prior objections be overruled.

Copies of the two ballots are attached as Exhibit 2 (the marking in the lower two corners of the upper of the two ballots indicating the portion torn off). Exhibit 3 contains the face of the two challenged ballot envelopes and accurately reflects the fact that Timmons' name was written on the face of the secret envelope, as well as the identification stub.

The Employer contends that one ballot is void because the two lower corners of it were torn off; that the secrecy of the other ballot was destroyed by Timmons' printing his name on the large portion of the challenged ballot envelope; that the identity of the voters was, therefore, readily discernible and undisguised; and that the Board Agent's shuffling of the two ballots in

his hands was done in such a manner that the observers could readily follow.

The Petitioner denies that the shuffling of the ballots could be followed and contends that since both ballots were marked, "Yes", secrecy becomes a moot question.

1/  
The untorn ballot in question clearly reflects the voter's intent and contains no identifying marks and is, therefore, a valid ballot. Assuming arguendo that this ballot was in the challenge envelope bearing Timmons' name, such a marking on the envelope does not interfere with the secrecy of the ballot. N. A. Woodworth Company, 115 NLRB 1263, 1265, and "the fact that a voter's identity may be publicly known as an unavoidable result of the challenge procedure, does not invalidate his vote in the determination of the election results." Prestige Hotels, Inc., 125 NLRB 207, 208.

In view of the resolution of the challenge to the untorn ballot made above, 2/ it is unnecessary to resolve the challenge to the torn ballot, since if that challenge is overruled the relevant count would be 96 votes for Petitioner and 94 against; if the challenge to that ballot is sustained, the relevant count would be 95 votes for Petitioner and 94 votes against. In either case, a majority of the valid votes counted would have been in favor of Petitioner.

Accordingly, it is recommended Petitioner be certified as the exclusive representative of all production and maintenance employees of the Employer at its Syracuse, Indiana, establishment; but excluding all office clerical em-

ployees, all mobile home haulaway truckdrivers, guards, and all professional employees and supervisors as defined in the Act.

DATED AT Indianapolis, Indiana, this 16th day of June, 1967

[Subscription Omitted in Printing]

LAW OFFICES  
SHEA & SHEA  
3040 GUARDIAN BUILDING  
DETROIT, MICHIGAN 48226

WOODWARD 3-1610  
WOODWARD 3-1611

JAMES F. SHEA  
JOHN C. SHEA  
FREDERICK WM. HEATH

AIR MAIL  
REGISTERED  
RETURN RECEIPT

May 18, 1967

Mr. William T. Little.  
Regional Director  
National Labor Relations Board  
Region 25  
ISTA Center, 150 West Market Street  
Indianapolis, Indiana 46204

In re: Liberty Coach Company, Inc.  
Syracuse, Indiana  
Case No. 25-RC-3332  
Challenges

Dear Mr. Little:

On May 16, 1967 at the opening of the ballots of Kleinknight and Timmons the employer challenged said ballots as set forth in the statement, a copy of which is hereto attached.

It is noted herein that the ballots of these two individuals have been the subject of challenges, objections, exceptions, briefs and correspondence, evidence, documentary exhibits and sworn transcript, all of which have been filed with the National Labor Relations Board heretofore and are incorporated

- 
- 1/ The lower ballot on Exhibit 2
  - 2/ The upper ballot on Exhibit 2

herein by this reference and all of which were completely ignored by the Board in its action heretofore.

The occurrences of May 16, 1967 further compound the errors associated with the election in connection with the voting and ballots of these two individuals. The uncontested evidence is that neither the union or the employer considered these men as a part of the appropriate unit until they were brought in "ringer style" after the appropriate unit had voted with the first reference to them by the union a few minutes prior to the election, as set forth heretofore.

The Board's procedure was not to determine their eligibility at that time despite challenges, but to segregate each of their ballots in a perforated envelope boldly marked "your secret ballot envelope." On the perforated stub of the envelope, the Board Agent wrote the name of each "voter." In addition to this, Timmons printed his name boldly on the "secret envelope" portion of the ballot so that his envelope could be readily identified from a considerable distance.

When the Board Agent opened the two envelopes on May 16, 1967 all parties had observed the identification of the envelopes and the employer had objected. The ballot of Kleinknight was removed from its envelope first, and the ballot was readily discernible as unusual in that corners had been removed from the ballot. The Board Agent had been careful in removing said ballot and all parties inspected the envelope to make sure that the removal process did not tear the ballot, although it was obvious this did not occur. Further, the missing parts of the ballot could not be located, and ballots and envelopes were subsequently resealed in a larger envelope.

The Board Agent then took Kleinknight's torn ballot and the ballot from Timmons' envelope and shuffled the two ballots in his hands in front of the parties in a manner that the observers could readily follow. Besides, Kleinknight's ballot with the torn corners could never be disguised and the only other ballot was from the envelope boldly marked Timmons. The entire procedure then and theretofore made a mockery of the election procedures and violated the secrecy of the ballot and said ballots have no standing in the Tally.

[Subscription Omitted in Printing]

May 16, 1967

Challenges by the employer, Liberty Coach Company to the ballots of Kleinknight and Timmons:

1. The ballot of Kleinknight was void because of definite geometric tears on two corners of the ballot which destroyed the secrecy of the ballot.
2. The secrecy of Timmons' ballot was destroyed by his printing his name on the secret envelope portion and in the counting said ballots the identity of the ballot to the marked envelope was observable to those present at the opening of the ballots.
3. The secrecy of both ballots was destroyed by the failure to determine eligibility prior to election and subsequent segregation of the ballots.
4. The employer renews its objections and challenges heretofore set forth in pleadings, correspondence, transcripts and records, briefs, exceptions, objections filed with the Regional Director and/or Board.
5. The employer reserves its right to file additional grounds and documents in support hereof.

LIBERTY COACH COMPANY

James F. Shea

---

UNITED STATES OF AMERICA

National Labor Relations Board  
**OFFICIAL SECRET BALLOT**FOR CERTAIN EMPLOYEES OF  
LIBERTY COACH COMPANY, INC.

Do you wish to be represented for purposes of collective bargaining by •

INTERNATIONAL UNION OF ELECTRICAL,  
RADIO AND MACHINE WORKERS,  
AFL-CIO ?

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

YES



NO

DO NOT SIGN THIS BALLOT. Fold and drop in ballot box.  
If you spoil this ballot return it to the Board Agent for a new one.

UNITED STATES OF AMERICA

National Labor Relations Board  
**OFFICIAL SECRET BALLOT**FOR CERTAIN EMPLOYEES OF  
LIBERTY COACH COMPANY, INC.

Do you wish to be represented for purposes of collective bargaining by •

INTERNATIONAL UNION OF ELECTRICAL,  
RADIO AND MACHINE WORKERS,  
AFL-CIO ?

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

YES



NO



DO NOT SIGN THIS BALLOT. Fold and drop in ballot box.  
If you spoil this ballot return it to the Board Agent for a new one.

CHALLENGED BALLOT

*Richard Z. Timmons*

Secret ENVELOPE

FORM NLRD-4646  
(2-65)

# CHALLENGED BALLOT

## Secret ENVELOPE

FORM NLRB-4046  
(2-65)

### IDENTIFICATION STUB

NAME Richard Thompson

CLOCK NO. \_\_\_\_\_ UNIT \_\_\_\_\_

JOB CLASS Mechanic

COMPANY Liberty Coach

POLLING PLACE \_\_\_\_\_ DATE 10/28/66

REASON FOR CHALLENGE \_\_\_\_\_

CHALLENGED BY NOC

BOARD AGENT WZ

PUT ADDITIONAL INFORMATION ON  
THE BACK OF THIS STUB

### IDENTIFICATION STUB

NAME Max Klainknight

CLOCK NO. \_\_\_\_\_ UNIT \_\_\_\_\_

JOB CLASS Mechanic

COMPANY Liberty Coach

POLLING PLACE \_\_\_\_\_ DATE 10/28/66

REASON FOR CHALLENGE \_\_\_\_\_

CHALLENGED BY \_\_\_\_\_

BOARD AGENT WZ

PUT ADDITIONAL INFORMATION ON  
THE BACK OF THIS STUB

[Caption Omitted in Printing]

EMPLOYER'S EXCEPTIONS TO  
REPORT ON OBJECTIONS AND CHALLENGES  
AND  
RECOMMENDATIONS TO THE BOARD

The Employer, Liberty Coach Company, Inc., files the following exceptions to the Regional Director's report dated June 16, 1967:

A. The Employer takes exception to the report and the entire prior proceedings in this case in that there has been no administrative consideration of any evidence, the entire cumulative proceedings have been arbitrary and capricious, violative of fair and just administrative proceedings, and contrary to the law requiring hearings where substantial issues of fact exist. In support of this exception the Employer incorporates herein by reference the following:

1. All correspondence between the Regional Director and the Employer and the Petitioner Union.
2. All evidence, including, but not limited to, affidavits, transcripts and testimony, documentary exhibits, records and transcripts of records submitted to the Regional Director from the initiation of his investigation, in this case.
3. The objections and challenges of the Employer and Petitioner Union.
4. The reports of the Regional Director.
5. The exceptions and briefs of the Employer and the Petitioner Union.
6. The correspondence between the Employer and the National Labor Relations Board concerning the Employer's brief.

7. The Employer's motion and petition for reconsideration and review of decision and direction dated April 24, 1967 and request for hearing and a direction to the Regional Director to furnish the National Labor Relations Board with a complete record filed with the National Labor Relations Board.
8. The decisions of the National Labor Relations Board.
9. Report on objections and challenges by the Regional Director dated June 16, 1967.

The Employer again requests that the evidence and the foregoing items, which are in the control and the custody of the Regional Director, be furnished to the National Labor Relations Board for its administrative review and decision. The Employer proved, without question, its objections demonstrating that the Petitioner Union had deliberately set out to create an atmosphere surrounding the election that would deny the freedom of choice of the employees involved in the representation election. The Employer proved that the Union accomplished this result by the most insidious of means, among which were the issuance of handbills and bulletins and letters immediately preceding the election which accused the Employer and supervisor of systematically cheating and defrauding the employees out of economic benefits. Among these economic benefits, it was alleged that the Employer cheated the employees out of incentive production bonus. As a matter of fact, the Employer proved that a slow down had occurred on its production line and this slow down was testified to by employee representatives of the Union; and, as a matter of fact, the amount of incentive compensation was, accordingly, affected because production was decreased. But this was not the charge that the Union made. Rather, after causing a loss of incentive compensation to all of the Employer's

employees, the Union charged that this loss occurred because the Employer had fraudulently manipulated both production and the computation involved in the incentive production bonus. However, the Union did not see fit to make these charges itself, but prepared the handbills and letters and bulletins and printed the letters and handbills and bulletins and issued and distributed them over the names of approximately fifteen Liberty Coach Company, Inc. employees. Those employees, under affidavit submitted to the Regional Director, stated they had no proof of anything of this nature and would not have signed or authorized the use of their names in the promulgation and distribution of these fraudulent accusations. If the Union had disclosed its authorship of these charges and had not sought to promulgate them under the names of fellow employees, they would still have had a drastic effect upon the results of the election. However, the insidious use of fellow employees names grossly and graphically increased the divisive affect of these fraudulent charges. Even then the Petitioner Union was not satisfied because it had founded these fraudulent charges on a group of unjust and illegal accusations, otherwise, against the Employer and its supervision. Among the others were a series of charges against management that it was participating in illegal threats and intimidation and coercion of employees, such as threatening to cut off smoking privileges, Christmas and vacation benefits, closing the plant if the Union won, spying on Union meetings, etc., as set forth in the exhibits incorporated herein by reference. The attempt then was to completely discredit the Employer and its management as a foundation for the fraudulent charges levied against the Employer, wherein the Employer was charged with defrauding its employees

out of economic benefits, supra. The Employer proved that its own conduct was calculated to create a most democratic atmosphere in connection with the election. Union members testified, including those whose names had been affixed to the fraudulent Union literature, that Union organizers were given opportunities far beyond those required by law in their organizational activities on the job. Further, the Employer issued no propaganda, letters or handbills, solicited no votes and made no speeches to its employees and, in fact, conducted itself just as wholesomely as it had in a prior UAW election, after which the UAW had sent a letter to the Employer and all of its employees commending the Employer for its conduct in that prior election, even though the UAW had lost the election. That letter was submitted as an exhibit to the Regional Director. The Employer also proved that there was no way in which the Employer could counter the charges of the Union so as to nullify their consequences because they had been made shortly before the election and because the Employer's incentive production compensation bonus was a complicated formula with many elements. In this connection, the Regional Director's investigator spent many days determining, computing and verifying and requested many, many exhibits in order to determine the correctness, to its satisfaction, of the Employer's bonus computations. Certainly, a number of the Employer's older employees over the years were familiar with the computation and also knew that the slow down was affecting their bonus, rather than any acts of the Employer. However, the Employer proved that it had many, many new employees who were particularly subject to believing the fraudulent accusations by the Union. In the little time prior to the election

available to the Employer it would have been impossible to refute the charges made by the Union because of the complexities involved. This the Union knew. The Union knew that its only possibility at the Employer's establishment in Syracuse was to create bitterness, distrust and divisiveness and it did so with systematic calculations, and the results were as insidiously divisible as the Union calculated. The Union also offered inducements to Liberty employees for signing union cards and voting yes in the election.

Further, the Employer submitted evidence to the Regional Director with great difficulty because the transcript of the proceedings will demonstrate that the Regional Director's investigator did not want the evidence and would spend no time with the Employer's requirements and it will demonstrate that it was only because of the Employer's diligence that the great body of evidence supporting and proving its objections and challenges was gathered and submitted to the Regional Director. Even then, the record of these proceedings will show that the Regional Director in his first report ignored the evidence or any recitation of the evidence in his report and came up with unsupported conclusions with respect to the Employer's objections. The record will show that the National Labor Relations Board considered no evidence and absolutely refused a hearing to the Employer; and, in fact, did not require the Regional Director to forward the evidence collected by the Regional Director in his investigation in connection with this case and even refused the Employer's brief in the premises. Further, the Regional Director and the National Labor Relations Board followed the same procedure with respect to the challenges of the Employer. The Employer excepts to all of the foregoing.

B. As to the exceptions on challenges, specifically, the Regional Director's initial report does not go into any real discussion of the evidence and omitted many areas. Even so, to the extent it declared on the evidence, that evidence, as set forth in challenges, exceptions and briefs heretofore, clearly supported the initial recommendation of the Regional Director in this respect and the position of the Employer. Without a hearing and without the benefit of a review of the evidence the National Labor Relations Board rejected the recommendation of the Regional Director on challenges and did so on the basis that the intent of the parties to a stipulation should be determined by referring only to one change in wording in the process of negotiating that stipulation. In the first place, by going to the question of intent and doing so outside of the language expressly used in the stipulation, the National Labor Relations Board was tacitly admitting that from its viewpoint the stipulation was ambiguous. The Employer's position was that the stipulation used restrictive language, that being the word "establishment", which was defined by the Supreme Court of the United States as a word of limitation as opposed to the significance that the National Labor Relations Board would give the word. However, inasmuch as the Board determined that it would go outside of the stipulation and the one facet of the stipulation negotiation to derive at an actual intent rather than the express intent in the stipulation, the Board's position should have been that it would then consider all of the evidence and surrounding circumstances in determining this intent. That evidence was overwhelmingly in the Employer's favor, as set forth in the exhibits incorporated herein by reference. Moreover, that evidence discloses that the Petitioner Union acted

in bad faith in connection with the two employees concerned and their ballots. The evidence demonstrated that Petitioner Union, prior to the election, had taken the position and so advised the two employees concerned that they would not be eligible employees unless the haul-away truck drivers were included in the appropriate unit. It disclosed that the Union, weeks prior to the election, acknowledged that these employees, with whom it had had personal contact, were not going to be on the eligibility list; and, yet, the Union made no effort until a few minutes before the election to bring this matter up, after having told the employees that they would not be eligible. The evidence shows the Employer had no contact with these employees with respect to the election and did not consider that they were eligible. The evidence further demonstrated that these employees, aside from not being at the Syracuse establishment, had no community of interest in their employment with the eligible employees at the Syracuse location and that the Regional Director set forth that fact in his initial report. Yet, the Board reversed the Regional Director's recommendation and did so without the availability of one centilla of evidence for its review. The evidence, as demonstrated by the Employer's submissions to the Regional Director and the National Labor Relations Board heretofore incorporated herein by reference, demonstrates that the total procedure and cumulative facts involving the eligibility and the ballots of these two employees is almost shocking in its departure from the requirements of a fair and secret election with orderly procedures involved. It is at once apparent that every aspect of their relationship to the election separated their involvement from the eligible employees, so that not only was their employment severed, but

participation in pre-election activity, the election, and post-election procedures accentuated their severance. Among the facts previously submitted to the Regional Director and to the Board and those apparent now, are the following:

1. The Union advising them that they would not be eligible unless the haul-away drivers were eligible.
2. The haul-away drivers being excluded.
3. No contact between the Employer and the employees with regard to their eligibility.
4. No election notice being posted in their place of employment and no request by the Union or the National Labor Relations Board for such an election notice.
5. The Union being presented with the eligibility list proposed by the Employer several weeks prior to the election, after it advised the two employees involved that they would not be part of the unit, and the Union not advising the Board or the Employer to the contrary.
6. The Union, a few minutes prior to the actual election, bringing up the names of said employees and requesting to be able to contact them and to bring them over to vote.
7. After all other employees had voted, the polling place being held open for thirty (30) minutes for the arrival of the two employees.
8. The two employees casting ballots, which were then placed in so-called secret envelopes, which ballots were mutilated and not secret because:

(a) : Mere segregation of their ballots was calculated to destroy the secrecy, which could have been avoided if the question of the stipulation or their eligibility had been brought up by the Union within a reasonable amount of time when the Union, and not the Employer and not the Board, had all the facts showing that their non-eligibility was the issue as far as the Union was concerned.

(b) Despite the fact that the challenged ballot of Richard Timmons was put in a secret envelope, his name was clearly printed on said envelope on the "secret portion by Mr. Timmons, which clearly identified the so-called secret envelope.

(c) The ballot of Max Kleinknight was torn and portions removed from both lower corners. The exhibit appended to the Regional Director's report does not disclose the true nature of the tears and removed portions because these could not be photographed and the exhibit reflects the inking in by the Regional Director in an effort to show some nature of mutilation. There is no reason that, where a statute of the United States requires that a representation election be secret, procedures should be approved that would be violative of the secrecy requirements of any other elections in our democracy. The markings, names and mutilations involved with these

ballots defeated the very purpose of a secret election and provided the very problems the statute sought to avoid in the secrecy requirements. These two men were brought over by the Union "ringer fashion" after all other eligible employees had voted. The evidence shows that apparently certain promises had been made to these employees involving production bonus, even though the evidence shows that the Regional Director found that these employees had no community of interest in the production bonus. What other inducements were offered to these employees is not known. But knowledge of inducement is not the question. The point is that at any election where, by way of procedure or markings on the ballot or mutilation of a ballot, the ballot of a voter can be identified, that identification can be utilized for purposes that are contrary to and violative of fair elections. There is no question that it is a well-founded principle of American election laws, state and federal, that ballots marked as these ballots and identified and mutilated as these ballots are void and invalid, and so likewise the procedure by which they were segregated and, especially in this particular case, where the Union is responsible for the segregation.

(d) The procedure of the Board in counting these

ballots involved turning them over several times in the hands of the Board employee in front of the Employer's agent and the Union's agent and no use of a ballot box. Again a serious question, as is the question of why both of these ballots were identified through writings and mutilations.

(e) A procedure whereby votes are segregated from other votes during the course of an election so as to destroy their secrecy is illegal and improper procedure.

9. The Employer, in prior objections and challenges, exceptions, briefs and submissions, proved that the two employees, Richard Timmons and Max Kleinknight, and their employment was completely separate and had no community of interest with that of the eligible employees at the Syracuse establishment and that Timmons' and Kleinknight's establishment was a separate establishment not covered by the stipulation, and the Regional Director, on the evidence, so found. Moreover, the Employer proved that the term "garage Mechanics" was a misnomer with respect to these men in the sense of a classification having any definitive value as to their duties and responsibilities. The Employer proved that these employees were actually garage operators having management and

confidential responsibilities and functions as to the Employer and that, in any event, they would not be eligible to vote for these reasons alone.

None of this evidence has been reviewed by the National Labor Relations Board, and the Board has refused a hearing in the premises. It is interesting, pertinent and informative that both parties, the Employer and the Petitioner Union, have been refused a hearing in the premises and that both of them have requested that the election be set aside on the basis of the election atmosphere and, yet, these requests have been denied without a hearing.

C. The Employer notes and objects that its contentions are not properly stated in the report. The Employer also notes and objects to the Regional Director's opinion that matters raised by the Employer are res judicata. Res judicata, in its simplest substance, means a matter adjudged, judicially acted upon or decided. Certainly, this matter has never been adjudicated, even in the sense of administrative adjudication. Where was the consideration of the evidence? Where was the review of the investigation? Where were the facts brought before the administrative body? The use of this phrase can not dignify the omissions hereinabove or give the proceedings the quality of a judicial determination.

The Employer requests that the National Labor Relations Board reject the recommendations of the Regional Director in each and every instance where they are against the Employer's objections and challenges, order a hearing, and rule for the Employer on the ballots of Timmons and Kleinknight, that said employees are not within the unit agreed upon, have no community

of interest with the appropriate unit, that the Union's conduct interfered with the election, and that the results of the election were illegally influenced by the fraudulent acts of the Petitioner Union.

[Subscription Omitted in Printing]

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[Caption Omitted in Printing]

#### SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a Stipulation for Certification upon Consent Election approved on October 11, 1966, an election by secret ballot was conducted on October 28, 1966, under the direction and supervision of the Acting Regional Director for Region 25, among the employees in the stipulated unit. At the conclusion of the election, the parties were furnished with a tally of ballots which showed that approximately 197 eligible voters, 190 cast ballots, of which 94 were for, and 94 against, the Petitioner, and 2 were challenged. The challenged ballots were sufficient in number to affect the results of the election. Thereafter, the Petitioner and the Employer filed timely objections to conduct affecting the results of the election.

In accordance with the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, the Acting Regional Director conducted an investigation and, on December 29, 1966, issued and duly served upon the parties his Report on Challenged Ballots and Objections to Conduct Affecting the Results of Election and Recommendations to the Board, in which he recommended that all objections of the Petitioner and Employer be overruled and that the challenges to the two ballots be sustained and an appropriate Certification of Results issue.

On January 9, 1967, the Employer filed exceptions to the Acting Regional Director's Report. On January 11, the Petitioner also filed exceptions to the Report and a brief in support of its exceptions. On April 24, the Board issued a Decision and Direction, in which it adopted the findings, conclusions, and recommendations of the Acting Regional Director that all objections to the election be overruled, but disagreed with his disposition of the two challenged ballots, and ordered that they be opened and counted and that a revised tally of ballots be prepared and served upon the parties.

Thereafter, on May 1, 1967, the Employer filed a motion for reconsideration of the Board's Decision and Direction and a request for a hearing, attaching thereto a brief in support of the motion and request. On May 9, 1967, the Board denied the Employer's motion and directed the Acting Regional Director to open and count the two challenged ballots, and to prepare and serve a revised tally of ballots upon the parties.

On May 16, 1967, the two challenged ballots were opened in the presence of the parties at the Board's Regional office. Both were marked "yes". Thereupon, the Employer challenged the validity of both ballots. The Acting Regional Director prepared and served upon the parties a revised tally of ballots which counted the two opened ballots as challenged ballots, and, therefore, did not change the tie result in the original tally of ballots prepared on

October 28, 1966. Thereafter, the Employer filed timely objections to the count of the challenged ballots and renewed the objections to the conduct of the election previously overruled by the Board.

On June 16, 1967, the Acting Regional Director issued and duly served upon the parties his Report on Objections and Challenges and Recommendations to the Board, in which he recommended that the Employer's attempt to revise his prior objections be overruled, that the untorn one of the two challenged ballots was valid and should be counted and the validity of the other ballot remain unresolved since an additional "yes" vote could not affect the results of the election, and that the Petitioner be certified as the collective-bargaining representative in the appropriate unit. Thereafter, the Employer filed exceptions to the Acting Regional Director's Report.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the policies of the Act to assert jurisdiction herein.
2. The Labor organization involved claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
4. The parties stipulated, and we find, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees of the Employer at its Syracuse, Indiana, establishment, ex-

cluding office clerical employees, mobile home haul-away truckdrivers, guards, professional employees, and supervisors as defined in the Act.

5. The Board has considered the Acting Regional Director's Report and the Employer's exceptions, and hereby adopts the Acting Regional Director's findings and recommendations.<sup>1</sup>

Accordingly, as all the objections have been overruled and as the resolution of the challenged ballots shows that the Petitioner has obtained a majority of the valid ballots cast, we shall certify it as the exclusive bargaining representative of the employees in the appropriate unit.

#### CERTIFICATION OF REPRESENTATIVE

IT IT HEREBY CERTIFIED that International Union of Electrical, Radio, and Machine Workers, AFL-CIO, has been designated and selected by a majority of the employees of the Employer in the unit found appropriate herein as the representative for purposes of collective bargaining, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Dated, Washington, D. C. August 15, 1967

Frank W. McCulloch, Chairman

John H. Fanning, Member

Gerald A. Brown, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

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<sup>1</sup>The Employer's exceptions raise no material or substantial issues of fact or law which would warrant reversal of the Acting Regional Director's findings and recommendations or the holding of a hearing.

[Caption Omitted in Printing]

## TRIAL EXAMINER'S DECISION

## Statement of the Case

MELVIN POLLACK, Trial Examiner: This case was heard at Goshen, Indiana, on December 14 and 15, 1967, pursuant to a complaint issued on October 24, 1967, upon a charge filed by the International Union of Electrical, Radio, and Machine Workers, AFL-CIO, herein called the Union. The complaint, as amended at the hearing, alleges that Respondent refused to bargain with the Union despite a Board certification, in violation of Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, discharged Willis Newby, in violation of Section 8(a)(3) and (1) of the Act, and interrogated and threatened employees, in violation of Section 8(a)(1) of the Act. The General Counsel and the Respondent have filed briefs which I have carefully considered.

Upon the entire record,<sup>1</sup> including my observation of the witnesses, I make the following:

## Findings of Fact

## 1. The Business of the Respondent

Respondent, an Indiana corporation, manufactures mobile homes at its plant in Syracuse, Indiana. During the 12-month period preceding the issuance of the complaint, Respondent manufactured, sold, and distributed from

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<sup>1</sup>The transcript of testimony is hereby corrected pursuant to motions filed by General Counsel and the Respondent, except for the correction to page 145 line 1 proposed by the General Counsel and opposed by the Respondent. The General Counsel and the Respondent have proposed somewhat dissimilar corrections to page 43 lines 24-25, page 113 lines 11-13, and page 137 lines 16-18. I consider the differences unimportant and adopt the Respondent's proposed corrections. I also consider unimportant certain inaccuracies and omissions pointed out by Respondent. In my opinion, the transcript as corrected accurately reports the material testimony at the hearing. I therefore reject the Respondent's request that I find the transcript so "patently and completely unreliable" as to impeach its validity.

its Syracuse plant finished products valued at more than \$50,000 to points outside Indiana. I find, as Respondent admits, that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

## II. The Labor Organization Involved

International Union of Electrical, Radio, and Machine Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

## III. The Unfair Labor Practices

### A. The refusal to bargain

Pursuant to representation proceedings under Section 9 of the Act, the Board on August 15, 1967, certified the Union as the collective bargaining representative of the production and maintenance employees at Respondent's Syracuse, Indiana, plant. Respondent challenged the validity of the certification and on August 17, 1967, refused to bargain with the Union. Respondent claims no newly discovered or previously unavailable evidence, or other special circumstances warranting my re-examination of the Board's determinations in the representation proceeding. I find that Respondent has refused to bargain with the Union, in violation of Section 8(a)(5) and (1) of the Act.

### B. The discharge of Willis Newby

Willis Newby worked on the roof crew at the Syracuse plant from February 1966 until his discharge on September 5, 1967. Newby signed a union card on August 26, 1966, and became a member of the Union's organizing committee. The Union on September 26, 1966, sent a letter to Edward Hussey, Respondent's president, advising him that the Union was conducting an organizational campaign at the plant and that 13 named employees, including Newby, had been authorized to organize in behalf of the Union. Pursuant to a petition filed by the Union, the Board conducted an election at the plant on October 28, 1966. Before the election, Newby passed out union cards to about 12 em-

ployees during break and lunch time, and also distributed union handbills about 7 or 8 times at a plant gate after work. Along with other employees, he wore a union button 2 or 3 inches in diameter. A week after the Board certification of the Union on August 15, 1967, Newby distributed a union handbill to employees as they left the plant. He offered a handbill to his foreman, Karl Hoover, who refused to take it. The handbill, which was issued by the Union's "Administrative Committee" and named the nine employees who composed it, including Newby, evoked a reply from President Hussey a few days later.

A fire in Respondent's cabinet department on Wednesday, August 30, 1967, forced a layoff of production department employees until September 5. President Hussey told the production employees on August 30 that he wanted to resume production "by Friday" but they "would probably have to shoot for Tuesday" and work a 9-hour day through Saturday.

Hussey testified that he and others worked "day and night" and had the plant ready for operation by Tuesday morning, September 5. A check about 10:30 a.m. that day showed that, except for Newby and Amos Yoder,<sup>2</sup> Respondent's 200 employees had reported in or had informed Respondent why they

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<sup>2</sup> Amos Yoder, a roof crew man, requested an employee the day after the fire to tell Foreman Karl Hoover that he had quit Respondent's employ. Another roof crew man, Ray Chupp, also quit Respondent's employ before work resumed on September 5. About 7:15 a.m. on September 5, Respondent sent two newly hired men, Elden Kemp and Lloyd Yoder, to work on roofs. Roof crew men Clyde Campbell and Floyd Rapp testified that Amos Yoder's timecard, unlike Newby's, was not in the timeclock "out" rack at any time on September 5. The General Counsel argues that this evidence shows that Respondent knew that Amos Yoder had quit before September 5, and that its purported discharge of Yoder that day was an attempt to hide the discriminatory motivation for discharging Newby. Assuming that the absence from the timerack on September 5 of Yoder's Card indicates that someone in Respondent's employ knew Yoder had quit, it does not follow that President Hussey or Superintendent Warren, who were concerned with more urgent matters, were necessarily so informed. Nor does it follow from the sending of two newly hired men on the morning of September 5 to supplement the roof crew that Hussey or Warren knew that Amos Yoder as well as Chupp had quit before September 5. As only three of a normal 6-man roof crew reported for work on Tuesday morning, it was entirely reasonable for Respondent to assign two of at least three employees hired that morning to supplement the roof crew.

were unable to work. Hussey instructed Plant Superintendent Charles Warren to "pull" the cards of Newby and Yoder.

About 2 p.m. in a telephone conversation, Newby asked Superintendent Warren, "Are you working?" Warren said "yes" and informed Newby that his card had been pulled and that he had been replaced. The next morning at the plant, Newby told Warren that his telephone had been out of order Tuesday morning and that he would have reported for work if he had known "they were going to work." He also said that he had "a little upset stomach" but that he would have been in anyhow if he knew the plant was in operation. Later that morning, Newby spoke to Vice President Harold Weaver who told him that he had been discharged because "everybody had been to work" the previous day.

The record shows that Newby had a good work record free from unreported absences before his discharge on September 5, 1967, that Respondent neither before nor after September 5 discharged any employee for a single, unreported absence, that Newby was active in behalf of the Union, and that Respondent knew of his union activity. The record also shows, however, that the fire in Respondent's cabinet shop on August 30, 1967, occurred during Respondent's busy season, and that it was urgent for Respondent to get back into production as soon as possible. In these circumstances, President Hussey's decision to discharge Newby for "lack of interest" in failing to report for work or to call in his absence when production resumed on September 5, was not so patently unreasonable, to say the least, as to warrant an inference of discriminatory motivation. Newby's explanation, that he did not know the plant would operate on Tuesday, understandably did not satisfy Respondent as it appears that no other of Respondent's 200 employees had any doubt about Hussey's remarks on August 30 to the effect that the plant would reopen on Tuesday and that the employees would work a 9-hour day through Saturday.

I note further that Newby was but one of quite a few active union supporters and that his discharge occurred in a setting free of unfair labor practices other than Respondent's "technical" violation of Section 8(a)(5).

I find that the General Counsel has failed to prove by a preponderance of the evidence that Respondent discharged Newby to discourage support of the Union.

C. Interrogation and threats

Employee Larry Giengerich testified that about 2 weeks after the August 30 fire, he told Vice President Harold Weaver, in response to Weaver's inquiry about the Union, that employees Graff, Rapp, and Campbell were "on the board on the committee."

Amos Schrock testified that about September 30, 1967, Superintendent Warren asked him how he felt about the Union and he replied that he thought it would be a good thing. Warren disagreed, saying that he thought President Hussey would do something to discourage the Union committee and the employees.

Schrock further testified that Warren asked him on November 30, 1967, if he was going to a meeting of the Union committee and, when Schrock indicated that he was, told him that if he did so, he would be "the craziest fool that works at Liberty Coach." Warren also asked Schrock if the Union was sending out more literature.

The record shows that the Union furnished Respondent with the names of the employees active in its behalf, that the names of these employees appeared on leaflets distributed by the Union, and that employees openly engaged in union activity at the plant free from unlawful interference by the Respondent. In this noncoercive setting, I find that Weaver's interrogation of Giengerich in mid-September, and Warren's interrogation of Schrock on September 30 and November 30, would not tend to restrain employees in their

support of the Union. I similarly find that Warren's remarks to Schrock that Hussey would do something to discourage employee support of the Union, and that he thought Schrock would be "the craziest fool" if he attended a union committee meeting, were not implied threats of economic reprisal.

I conclude that Respondent did not unlawfully interrogate or threaten employees, in violation of Section 8(a)(1) of the Act.

#### IV. Conclusions of Law

1. Liberty Coach Company, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. International Union of Electrical, Radio, and Machine Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. All production and maintenance employees employed at the Respondent's Syracuse, Indiana, plant, excluding all office clerical employees, all mobile home haulaway truckdrivers, guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. Since August 15, 1967, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.
5. By refusing on or about August 17, 1967, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of the Respondent in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.
6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, its employees in the exercise of the rights guaranteed to them in Section 7

of the Act, and has thereby engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

#### V. The Remedy

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, I shall recommend that it cease and desist therefrom and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and if an understanding is reached, embody such understanding in a signed agreement.

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, there is hereby issued, pursuant to Section 10(c) of the Act, the following:

#### RECOMMENDED ORDER

Respondent corporation, its officers, agents, successors, and assigns, shall:

##### 1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment, with International Union of Electrical, Radio, and Machine Workers, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees employed at the Respondent's Syracuse, Indiana, plant, excluding all office clerical employees, all mobile home haulaway truckdrivers, guards, professional employees, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Syracuse, Indiana, place of business, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of said notice, on forms provided by the Regional Director for Region 25, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify said Regional Director for Region 25, in writing, within 20 days from the date of this Decision and Order, what steps the Respondent has taken to comply herewith.<sup>4</sup>

It is recommended that the complaint be dismissed insofar as it alleges violations of the Act other than found in this Decision.

Dated at Washington, D. C. February 12, 1968.

Melvin Pollack

Trial Examiner

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<sup>3</sup>In the event that this Recommended Order is adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDED ORDER OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

<sup>4</sup>In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 25, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

NOTICE TO ALL EMPLOYEES

PURSUANT TO

The Recommended Order of a Trial Examiner of the

NATIONAL LABOR RELATIONS BOARD

and in order to effectuate the policies of the

NATIONAL LABOR RELATIONS ACT

We hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with INTERNATIONAL UNION OF ELECTRICAL, RADIO, AND MACHINE WORKERS, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union as the exclusive representative of all our employees in the bargaining unit described below with respect to rates of pay, wages, hours, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

The bargaining unit is:

All production and maintenance employees employed at the Respondent's Syracuse, Indiana, plant, excluding all office clerical employees, all mobile home haulaway truckdrivers, guards, professional employees, and supervisors as defined in the Act.

LIBERTY COACH COMPANY, INC.  
(Employer)

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This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana 46204 (Tel. No. 633-8921).

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[Caption Omitted in Printing]

**RESPONDENT'S EXCEPTIONS  
TO HEARING EXAMINER'S DECISION**

I. Statement of the Case

Footnote 1, page 1: For the reasons set forth in Respondent's Motion to Correct the Record, Respondent takes exception to the Hearing Examiner's refusal to impeach the validity of the record.

III. The Unfair Labor Practices

A. The refusal to bargain

Lines 25-35, page 2: Respondent objects to the entire finding on the refusal to bargain issue. The Hearing Examiner not only refused a re-examination of the Board's determination but refused to receive any evidence bearing on the representation issues as set forth in Respondent's Motion with respect to the record as to the beginning of the transcript and lines 1, 2, 3 and 4 on page 143. The Hearing Examiner stated that he had no jurisdiction to review the certification by the Board and refused to receive any evidence with reference to the certification or representation issue. In the beginning of the transcript, these statements by the Hearing Examiner were omitted from the transcript. However, page 143 confirms their existence and they were included in Petitioner's Motion to Correct the Record.

Thus, this finding of fact is a conclusion completely unwarranted by the circumstances of this case and goes to the nub of the refusal to bargain issue. The issue with respect to the refusal to bargain is basically whether or not an employer must bargain under a certification by the Board in a

representation case where the regional director refuses to forward the record of the investigation to the Board and where the Board refuses to order the record of that investigation forwarded to it and where substantial and material issues of fact exist both as to objections and challenges in relation to the election and the conduct of the union as to that election.

The Hearing Examiner takes the position that Respondent claims no newly discovered or previously unavailable evidence, etc. The fact is that Respondent at all times in the representation case and in this case urged before the Board that it had not received a hearing. How can Respondent claim any newly discovered or previously unavailable evidence when its position is that it was never allowed to submit any evidence because it was never given its right to a hearing. It is not a question of undiscovered or newly discovered evidence, it is a question now and always of being allowed to submit any evidence whatsoever and this right has been systematically denied to this Respondent from the date of the election and for the benefit of the Board, Respondent here sets forth some of the agonizing aspects of its struggle in this regard.

When the investigator for the Regional Director arrived at the establishment of the employer in Syracuse, Indiana, he informed Respondent and its attorneys that he was a neutral person only interested in information pertaining to the objections and challenges despite the fact that on the next round he was the attorney pressing unfair labor practice charges against the Respondent. He then proceeded to demand Respondent's evidence on the spot. When he was told that Respondent would then present witnesses for an

investigation (not a hearing), he then required the attorney for the Respondent to submit to interrogations under oath as to Respondent's position. Because the investigator's handwriting was illegible and he was taking affidavits from employees that were only a portion of their statement and because he had taken these incorrectly, Respondent insisted upon paying a court reporter to make a record of his investigation that was complete and appropriate as to that part where Respondent was allowed to participate.

It should be born in mind that the investigator did not allow Respondent to be present when he interrogated rank and file employees and did not give Respondent a copy of their statements under oath as would have occurred in a hearing. The interrogation of Respondent's attorney under oath was a most unusual affair and Respondent notes that when an administrative agency insists upon interrogating a respondent's attorney prior to its investigation of a case, it is akin to a star chamber inquisition. This interrogation covered some one hundred pages of transcript of the investigation and a review of it will indicate a serious and almost desperate effort on the part of the investigator to restrict and limit the course of his investigation in a manner obviously prejudicial to the Respondent. Under what color of right does the National Labor Relations Board predicate the employer's right to an investigation upon an inquisition of its attorney. It might have been an interesting even though demeaning experience to the attorney, but it is even more demeaning to the Board.

As the interrogation of management personnel continued, the record of the investigation will show that the investigator refused to treat with

questions necessary and required on the basis of Respondent's objections, always noting that this would come later but then abruptly ending his participation and then in object detachment telling Respondent, in effect, to continue by itself. This Respondent did, with witness after witness, being always in a vacuum as to what the nature of other proofs obtained by the Hearing Examiner were and in a proceeding that had no relationship whatsoever to a hearing and which had never been indicated to be a hearing by anyone concerned.

Nevertheless, Respondent submitted thousands of pages of transcript of sworn statements supporting its objections and challenges together with hundreds of pages of documentation. This was not done or accomplished as part of a hearing, no right of subpoena existed, no right of cross-examination of witnesses was involved, no time to prepare was involved and an impartial hearing examiner was not present. Yet, the record of this star chamber investigation supports Respondent's objections and exceptions and challenges with regard to the representation case. Certainly with a proper hearing this evidence would have been amplified, other witnesses would have been called, and Respondent's case would have been more fully developed. Nevertheless, the objections and challenges presented material issues and the record of the investigation made under the most difficult of circumstances for Respondent was such as to support and prove the existence of substantial and material issues of fact. Respondent's attorney, in telephone calls to the Board, requested the Board to call up the full investigation record and personally requested the Regional

Director to forward the same to the Board. In both instances these requests were refused. Why?

The Board in its amended decision in the representation case changed its decision and opinion to state that it was based on the entire record and this only had the purpose of confusing a reviewing court unless that court understands that the only record before the Board was the report of the Regional Director that was not based upon the investigation and contained erroneous conclusions of fact and omissions of fact, the existence of which could not be determined within the four corners of the Regional Director's decision and recommendations. Certainly an appellate court cannot review decisions of fact found by a trial court when the appellate court is denied access to the evidence but this is what the National Labor Relations Board did as to Respondent's objections, exceptions and challenges. Respondent does not intend to demean the Board in any respect, and certainly this is not accomplished by calling its attention to its obligations for the stature of man or tribunal can only be measured in terms of responsibility.

Is it then a tritism to say this can't happen in America under a judicial and administrative system entitling one and all to the opportunity to present their case? Pointedly, more is involved than this because reviewing courts have the right to inquire into the proprieties of representation cases as well as unfair labor practice cases but this right does not exist or could not exist where the administrative agency can restrict the record so that the courts review is made without the facts. This occurs where a hearing does not occur and it occurs even more so when added to the lack of a

hearing is the failure to recognize that the NLRB must consider the record of the investigation when it is determining the propriety of recommendations of a regional director and certifying or non-certifying in a representation case.

Can the Board short-circuit its review and an appellate court's review by its blanket conclusion unsupported by any record of investigation or any hearing that "no substantial material issues of fact are involved". On brief counsel for the General Counsel suddenly got the message and tried to cover up the lack of a hearing on the representation issue by asking the Hearing Examiner to find that Respondent had not claimed new evidence. The Hearing Examiner then incorporated that finding. Respondent desires to be polite and respectful to the Board and does not believe that it is being less so by drawing the Board's attention to its transfixed certainty that a hearing must sometime sooner or later occur. Respondent is not dealing with a case of newly discovered evidence after a hearing. It is a pure and simple case of no hearing - no justice.

Respondent has respectfully pointed out to the Board, its agents, its investigators and the Hearing Examiner that denial of a hearing is not the law and cannot be the law. Respondent incorporates the entire record of the representation case including all pleadings, objections, challenges, exceptions, briefs, correspondence, and sworn statements in the investigation, and documentary evidence to demonstrate the most serious omission in this case.

Respondent again respectfully requests and sincerely urges the

NLRB to overrule the Hearing Examiner's decision with respect to the refusal to bargain issue and to decertify the union pending a hearing on challenges and objections and order that hearing to be given in the representation case upon due notice to all parties concerned. Respondent notes that the records of all proceedings in the representation case and the unfair labor practice case have become lengthy but this should not confuse the issue because when everything is set aside the first and singular and startling fact concerning everything is that here is a case or cases that have proceeded along their way absent the one crucial requirement for justice and fair play and that is a hearing on the basic issues involved and it would be a great travesty if this case continues on its present course to a point of judicial review absent the basic hearing necessitated by the record in this case. Further, the NLRB should call up the record of the investigation if any doubt in its mind now exists as to the propriety of a hearing for all concerned in the representation case which is a prerequisite to charging this Respondent with refusal to bargain.

What really are the issues confronting the Board in the representation case? Respondent has covered them from every aspect possible to no avail. On challenges the Board, without anything but the Regional Director's recommendations, overruled the Regional Director when during the course of the investigation it was proved no community of interest existed as to the two employees whose ballots were challenged; that the Supreme Court of the United States supports the Respondent's position as to the word "establishment"; that the union had told the two

employees that as far as the union was concerned they were not part of the unit unless the truck drivers were and the truck drivers were excluded; that the two employees were temporary employees in an experimental location; that they were management personnel as garage operators and a thousand other pertinent facts dealing with their status and intent. Even without a hearing, Respondent proved this. The Board, without the record of the investigation, chose one isolated fact outside the stipulation to "cast" the intent of the parties and that fact, for what it was worth under the Supreme Court definition of the word "establishment", proves just the opposite. The irony is that the Hearing Examiner has now in his decision reintroduced the word "plant" into the unit definition in lieu of "establishment".

As to objections, Respondent, as the record of the representation case discloses, has tried every possible means to direct the Board's attention to the real and substantial issues of fact involved. As an example, the employer's compensation program involves a substantial and complicated incentive formula. When the union deliberately slows down production and then falsely accuses the employer of manipulating the production bonus (economic cheating or stealing from its employees), does the Board consider this a substantial issue of fact or a material issue of fact? When Mr. Nolan falsely accuses the Respondent's plant superintendent of illegal coercion and threats with regard to employees' rights, starts rumors of shutdowns, elimination of employee benefits and other sordid purported activities on the part of the employer, are we dealing

with substantial issues of fact? When these sordid falsities are put out to employees over the names of other employees, and when the employees whose names were usurped deny the authority to use their names and deny the truth of these accusations, are we dealing with substantial issues of fact? Are they material? Are they relevant?

Some times, perhaps many times, perhaps most of the time, this Board deals with an employer who seeks unfair position in an election and then complains loudly and crassly when the heat in the kitchen becomes unbearable. But as the Regional Director found and as the Hearing Examiner determined, Respondent is not such an employer. It dealt honestly and with integrity concerning its employees and the union and the election and the National Labor Relations Board. It did not receive like treatment.

Hearings have a way of eliciting the facts and putting parties and issues in their true perspective. Here because a hearing was denied, the secrecy of the ballots were violated when if a rule of necessity could serve as an exception to the required secrecy, the necessity hardly exists until a hearing ensues with a result requiring the violation. Even so it is a doubtful rule that any proposed necessity justifies this violation under any circumstances. Then the issue of marked ballots existed, as part of the peculiar and unusual circumstances surrounding the challenged ballots.

Yet the Board and Hearing Examiner by their refusal to consider even the record of the investigation in denying a hearing have drawn a shroud around the operative facts as if a declaration by the Board,

uninformed as to the facts, gains a significance beyond reality.

What, from Respondent's view, is a crucial issue herein is the scope of the record of the representation case. Counsel for the General Counsel introduced and the Hearing Examiner received the purported record of the representation case after denying Respondent's Motion to Require Production of Entire Record Including But Not Limited to The Investigation in the Representation Case. As noted hereinbefore, the reporter at the beginning of the record omitted the Hearing Examiner's remarks on this point, and his refusal to consider the representation issues.

B. The discharge of Willis Newby

Lines 50-56, page 2: Respondent objects to the conclusion that Mr. Newby's handbill invoked a reply from President Hussey. The Hearing Examiner, with respect to the introduction of General Counsel's Exhibit 4, gave Respondent permission to introduce other union literature (Tr. p. 7, L. 19). Then, during Mr. Nolan's testimony, the Hearing Examiner refused to receive this union literature referred to in Respondent's Brief to the Hearing Examiner.

The Hearing Examiner omitted the facts concerning Mr. Newby's activities the day of his discharge where, upon cross-examination, it developed that Mr. Newby was really off on a lark finishing the painting of his house, had complete disregard and left stranded the employee of Liberty whom Newby normally drove to work, that he had breakfast and painted his house and really didn't have an upset stomach at all and the

Hearing Examiner, having refused to accept testimony that Newby's phone was really not out of order, did not find that Mr. Newby's testimony in this regard was unbelievable as was his testimony in total (Mr. Newby's testimony, Tr. pp. 39-87, L. 1-25 in each instance).

Further, it is not clear from the Hearing Examiner's report that in eighteen months of substantial union activity at Respondent's Syracuse establishment no other claim of the discharge of any other union adherent is involved and Respondent submits these findings in support of the decision of the Hearing Examiner with respect to the discharge of Willis Newby (entire record). Respondent does point out that in the General Counsel's brief filed with the Hearing Examiner a certain looseness in dealing with the facts is exhibited and it would be well for the Board to go behind the briefs in this regard.

C. Interrogation and threats

Lines 5-40, page 4: In support of the Hearing Examiner's decision in this regard, Respondent notes that the Hearing Examiner did not indicate that Respondent was not given proper notice of the accusations involved or note that the testimony concerning the so-called interrogation and threats was not credible, was confused and was contradictory and that Mr. Warren denied having made any such statements and that Mr. Warren's testimony is corroborated by the absolute testimony of all concerned that a non-coercive setting existed at Liberty and this testimony was even elicited from Mr. Newby (entire record).

IV. Conclusions of Law

Lines 50-55, page 4: Respondent takes exception to paragraph 3 of the conclusions of law where the Hearing Examiner has substituted "plant" for "establishment" in the stipulation and where no evidence was permitted by the Hearing Examiner on the issue of what would constitute a unit appropriate for the purposes of collective bargaining and where no hearing ever occurred in the representation case with respect to the challenged ballots in connection with an appropriate unit or the other issues with respect to those challenged ballots as set forth hereinabove and throughout the record of this case and the representation case.

Lines 55-60, page 4: Respondent excepts to paragraph 4 of the conclusions of law on the basis that the Hearing Examiner stated that he had no jurisdiction to overrule the certification by the Board and could not and would not consider any evidence with respect to the certification and representation case and because said paragraph 4 is completely contrary to the facts and unsupported by a hearing to which Respondent was entitled.

Lines 1-9, page 5: Respondent objects to paragraph 5 of the conclusions of law on the basis that the certification was improperly made contrary to the challenges, objections and exceptions of Respondent which were valid and which would be supported by a preponderance of the evidence in any hearing and the failure to give Respondent a hearing justifies Respondent's refusal to bargain in this case as well as do the facts supporting its exceptions and challenges.

Lines 6-15, page 5: Respondent excepts to this conclusion of law on the same basis and for the same reasons as set forth with respect to its exceptions to paragraph 5, above.

V. The Remedy

Page 5: Respondent takes exception to the Hearing Examiner's decision as to the remedy on the grounds that the entire record of this case and the representation case demonstrates that Respondent is justified in refusing to bargain with the union as set forth hereinbefore.

Recommended Order

Lines 30-60, page 5 and lines 1-15, page 6: Respondent takes exception to the Recommended Order of the Hearing Examiner on the basis that Respondent was not guilty of any unfair labor practice and therefore no foundation exists for any recommended order in this regard as set forth hereinabove. (entire record).

Dated: March 7, 1968

[Subscription Omitted in Printing]

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CHARGING PARTY'S EXCEPTIONS TO THE TRIAL EXAMINER'S DECISION

The International Union of Electrical, Radio and Machine Workers, AFL-CIO, Charging Party herein, hereby files the following Exceptions to the Decision of the Trial Examiner dated February 12, 1968:

1. The finding and conclusion of the Trial Examiner (TXD 4, L 25-36) that the uncontroverted testimony (Tr. 151-153) that Respondent's Vice President Harold Weaver asked Employee Giengerich who the guys in the Union were, did not constitute a violation of Section 8(a)(1), is contrary to substantial evidence and is contrary to established legal principles.

2. The Trial Examiner improperly failed to include in his findings (TXD 4, L 8-11) the full context and facts of the conversation between Giengerich, Hochstetler and Vice President Harold Weaver which are established by uncontroverted testimony (Tr. 151-153).

3. The Trial Examiner improperly failed to include in his findings (TXD 4, L 13-17) the uncontroverted testimony that on or about September 30, 1967, Superintendent Warren asked Employee Schrock how he felt about the Union and Schrock replied that he thought it was a good thing, whereupon Superintendent Warren stated that he did not agree and that Respondent's President Hussey had been in the Mobil business too long and would do something to discourage the union committee and the employees (Tr. 144-5, 147-8).

4. The Trial Examiner improperly failed to include in his findings (TXD 4, L 19-23) the uncontroverted testimony that on or about November 30, 1967, Superintendent Warren questioned Employee Schrock about his union activity and the activity of

other employees in the union and used such strong language to condemn his conduct (Tr. 145-6, 149) as to constitute unlawful interference, restraint and coercion.

5. The Trial Examiner's finding that the interrogations occurred in a non-coercive setting (TXD 4, L 29), is contrary to the uncontroverted testimony (Tr. 144-153).

6. The Trial Examiner's finding that the admitted threatening remarks made by Superintendent Warren did not constitute threats of "economic reprisal" (TXD 4, L 36) is contrary to the uncontroverted evidence (Tr. 144-149).

7. The Trial Examiner erred as a matter of law in concluding that Superintendent Warren's threats of reprisals to Schrock on two occasions (Tr. 144-149) did not violate Section 8(a)(1) (TXD 4, L 13-23, 32-37).

8. The Trial Examiner erred as a matter of law in holding that the interrogation and threats occurred in a non-coercive setting (TXD 4, p. 29) when in fact one of the leading advocates of the Union had been discharged under circumstances which had a coercive effect on all the employees (Tr. 25, 54-58, 83, 185, 202-203) and the Respondent was unlawfully refusing to bargain with the Union.

9. The finding and conclusion of the Trial Examiner that Employee Willis Newby was not discriminatorily discharged (TXD 4, L 2-4) is contrary to the overwhelming weight of the evidence and is not in accord with established principles of law.

10. The finding of the Trial Examiner (TXD 3, L 37-38) that the discharge occurred in a setting free of unfair labor practices other than a "technical" violation of Section 8(a)(5) is contrary to the uncontroverted evidence of interrogation and implied threats (Tr. 144-153).

11. The finding of the Trial Examiner (TXD 3, L 3-5) that by 10:30 a.m. on September 5, 1967, all of Respondent's 200 employees except Newby and Amos Yoder had reported in or informed Respondent why they were unable to work, is contrary to the preponderance of the evidence.

12. The finding of the Trial Examiner (TXD 3, L 26-30) that President Hussey's decision to discharge Newby was not so patently unreasonable as to warrant an inference of discriminatory motivation is contrary to the preponderance of the evidence.

13. The finding of the Trial Examiner (TXD 3, L 52-63) that Respondent did not know on the morning of Tuesday, September 5 that Yoder had quit is contrary to the over-

whelming weight of the evidence (Tr. 97, 119, 122-4, 128, 157-8).

14. The Trial Examiner improperly failed to find that the reason given by Respondent for Newby's discharge was a mere pretext in view of his prior perfect attendance record, the absence of any warnings in his record, and his record of 3 pay raises (Tr. 25, 39, 51, 60-61, 84), the uncertainty as to whether the roof crew on which he was working were to report for work in view of the vagueness of Respondent as to when it would resume production after the fire (Tr. 52, 55-56, 73-4, 85-6, 107-108, 116-118, 130, 174-8, 201, 208), Newby's unsuccessful efforts to reach the plant by telephone all the morning of Tuesday, September 5 (Tr. 25, 54-5, 185, 202-203), the absence of numerous employees from work on Tuesday, Wednesday, Thursday and Friday of that week without any discipline imposed on them for being absent (Tr. 52, 107, 130-1), the numerous other controverted instances of employees missing work without calling in or reporting their absences who were not disciplined or reprimanded (Tr. 103-4, 127-8, 163-4), and the shifts in its defense and testimony by Respondent showed the dishonesty of its defense.

15. The Trial Examiner improperly failed to make a finding which is required by the overwhelming weight of the evidence that Respondent has a strong anti-union animus

(Tr. 10, 108-10, 134, 144-6, 147-9, 151, G.C. Exh. 16).

16. The Trial Examiner improperly failed to make a finding which is required by the overwhelming weight of the evidence that Respondent was motivated by anti-union animus when it discharged Newby (Tr. 10, 108-10, 134, 144-6, 147-8, 151, G.C. Exh. 16).

17. The Trial Examiner erred in basing his determination that Newby was not discriminatorily discharged because there were other active union supporters whom Respondent did not discharge (TXD 3, L 35-38), when in fact the Board in a prior case had found Respondent guilty of numerous violations of 8(a)(3) and had required Respondent to reinstate with back pay all employees whom it had discriminatorily locked out.

18. The Trial Examiner erred in refusing to permit the General Counsel to adduce background evidence demonstrating Respondent's continuous history of hostility to unions (Tr. 10, 89-90, 91-2, 154-5).

19. The Trial Examiner erred in refusing (Tr. 13-15) to take official notice of a prior case involving the Respondent wherein the Board found Respondent had locked out its employees for the purpose of defeating unionization in violation of Section 8(a)(3) and had committed other unfair labor

practices in violation of Section 8(a)(1) and (3), Liberty Coach Company, Inc., 128 NLRB 160.

20. The Trial Examiner erred in refusing to permit the General Counsel to adduce evidence of other discrimination, coercion and intimidation by Respondent against union adherents for the purpose of establishing that Respondent was discriminatorily motivated when it discharged Willis Newby (Tr. 10, 89-90, 91-92, 154-155).

21. The Trial Examiner improperly failed to recommend:

- (A) That Respondent reinstate Newby and make him whole for any loss of back pay and any other losses he may have suffered as a result of his discharge;
- (B) That Respondent cease and desist all interrogation of its employees with respect to their union activities and membership and other concerted activities for mutual aid and protection;
- (C) That Respondent upon request of the Union made within 1 month after this order becomes effective, immediately grant the Union and its Representatives:
  - (1) a list of the names and addresses of all

employees within the unit with job classifications and rates, and all fringe benefits, and for a period of three years thereafter promptly inform the Union of all changes in said list;

- (2) Reasonable access for a 3 year period to its bulletin boards and all places where notices to employees are customarily posted.

- (D) That Respondent make its employees whole for all losses in wages, insurance, pension or other fringe benefits which the employees of Respondent have suffered since August 17, 1967, by paying them such amounts as there is reasonable basis for finding they would have received had Respondent bargained in good faith with the Union immediately following its certification.
- (E) That Respondent make all provisions of any contract negotiated between the Union and the Respondent, including wage increases and fringe benefits, retroactive to August 17, 1967.
- (F) That Respondent upon request of the Union made within 1 month after this order becomes effective, meet with any representative designated by the Union

to deal with all grievances which have arisen in the plant since August 17, 1967, and if such grievances cannot be resolved to the satisfaction of the Union and the Respondent, that the Union may, within 30 days after receiving a final written answer from Respondent to any grievance or grievances, request arbitration by written notice to Respondent, and Respondent shall then submit such grievance or grievances to binding arbitration before an arbitrator to be mutually agreed upon between Respondent and the Union, with expenses of such arbitrator to be paid half by the Union and half by the Employer. In any such arbitration, all past practices and conditions existing in the plant at the time the grievance arose are to be treated as if incorporated into a contract between the Union and the Respondent, except that irrespective of any existing past practice or condition in the plant, the arbitrator shall consider that one term and condition of employment at all times on and after August 17, 1967, was that no employee should be disciplined or discharged except for just cause. If the Union and the Respondent cannot mutually agree upon an arbitrator within 30 days after the receipt by the Respondent of a

written request from the Union for arbitration, the Union shall request the Federal Mediation and Conciliation Service to submit a panel of seven names and each the Union and the Respondent shall take turns in striking therefrom a name at a time until only one name remains and that name shall be the arbitrator to hear the grievance or grievances so noticed for arbitration. Said right to arbitrate all grievances shall continue until superseded by any collective bargaining agreement signed by the Union and the Respondent or for 3 years from the date this order becomes effective, whichever shall occur first.

- (G) That Respondent shall post a notice which includes appropriate notification respecting such additional findings and remedies as the Board includes in its decision and order.

March 11, 1968

[Subscription Omitted in Printing]

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[Caption Omitted in Printing]

DECISION AND ORDER

On February 12, 1968, Trial Examiner Melvin Pollack issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner also recommended dismissal of certain other allegations of unfair labor practices. Thereafter, the General Counsel and the Respondent filed exceptions to the Trial Examiner's Decision and supporting briefs; the Charging Party filed exceptions;<sup>1/</sup> and the Respondent filed a reply brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner only to the extent consistent herewith.

The 8(a)(3) Violation

Employee Willis Newby worked on a roof crew for the Respondent from February 1966 to September 5, 1967. He was an active member of the Union's organizing committee, and the Union so advised the Respondent by

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<sup>1/</sup> The Charging Party also filed a request for oral argument before the Board. Since the record and briefs adequately present the issues and the contentions of the parties, the Charging Party's request for oral argument is hereby denied.

a letter in September 1966 which named the members of the committee. The Union won an election on October 28, 1966, and was certified by the Board on August 15, 1967. A week after the certification, Newby passed out union handbills to employees as they left the plant. The handbill named Newby as a member of the Union's "Administrative Committee." Newby had also distributed handbills some 7 or 8 times prior to the election. On August 25, Respondent sent a letter to its employees stating that it would not bargain with the Union.

On August 30, a fire at the Respondent's plant forced a shutdown of the plant. President Hussey informed the employees (about 200) on August 30 that he wanted to resume production "by Friday" but they "would probably have to shoot for Tuesday" (September 5). The plant reopened on September 5. Newby did not report for work that morning. No word having been received from Newby by 10:30 a.m., Respondent's President Hussey ordered that Newby's time card be pulled.<sup>2/</sup> About 2 p.m., Newby called the plant and asked Superintendent Warren, "Are you working?" Warren answered "yes", and then informed Newby that he had been discharged. The next morning, at the plant, Newby explained to Warren that his phone had been out of order and he could not call in until 2 p.m., and that he would have reported for work if he had known they were going to work. Vice President Weaver told him that he had been discharged because "everybody had been to work" the previous day.

<sup>2/</sup> According to Respondent's testimony, the card of Amos Yoder was also pulled. Although Yoder had several days prior thereto told another employee that he was quitting, Respondent contends that it had no knowledge of Yoder's decision, and argues that its action in also pulling Yoder's card demonstrates that it was even-handedly discharging any employee who failed to report in on September 5. Two employees testified that Yoder's card was not in fact in the rack at any time on September 5, which would indicate that Respondent had been made aware of Yoder's voluntary termination. We find significant in this regard the admission of Superintendent Warren that, in need of a roofing man on September 5, he allegedly attempted to call Newby but did not try to contact Yoder.

The Trial Examiner found that the fire at the plant occurred during the Respondent's busy season, and that it was urgent for the Respondent to get back into production as soon as possible. In these circumstances, the Trial Examiner believed that the Respondent's decision to discharge Newby for "lack of interest" in failing to report for work or to call in his absence when production resumed on September 5 was not so patently unreasonable as to warrant an inference of discriminatory motivation. The Trial Examiner found that the General Counsel had failed to prove by a preponderance of the evidence that Respondent discharged Newby to discourage support of the Union, and that, therefore, Newby was not discharged by the Respondent in violation of Section 8(a)(3) of the Act.

The General Counsel excepts to the Trial Examiner's failure to find that Newby's discharge was in violation of Section 8(a)(3). He asserts that certain alleged violations of Section 8(a)(1) by Respondent which occurred after the Board's certification of the Union demonstrates that Respondent was still resisting the Union's certification, and, after a long election campaign, the Respondent immediately reacted by manifesting a new display of antiunion hostility. According to the General Counsel, Respondent seized upon its first opportunity to take reprisals against the Union's success by discriminatorily discharging Willis Newby, thereby demonstrating to all its employees the fate of dedicated union leaders. The General Counsel asserts that the Respondent's claim that Newby's discharge was predicated on his failure to report his absence on September 5 was pretextual.

We believe that the General Counsel has proved his case of discriminatory discharge. It is undisputed that prior to the date of his discharge Newby had never had an unreported absence during his 18 months employment by the Respondent. Moreover, the record clearly shows that both

before and after Newby's discharge, no other employee received discipline as severe as discharge for a single unreported absence. Employee Rapp was absent and failed to notify the Respondent in April 1967, and was neither criticized nor discharged. Employee Campbell missed a day's work in 1967 and did not call in; he received no reprimand and was still working at the time of the hearing. Respondent asserts that it became disturbed by the excessive number of unreported absences among its employees and in July or August of 1967 admonished the employees to call in if they would be unable to report for work. But the record shows that, on August 29, a week before Newby was fired, employee Ben Yoder received only a written "final warning" for the offenses of "failure to report in when absent," "excessive absenteeism," and "excessive tardiness," and only after receipt of such a warning was he discharged on September 16 for "absenteeism - failure to report in when absent." On November 21 employee Baker, whose record showed "excessive absenteeism," was simply given a "first written warning" and apparently continued in Respondent's employ. And the evidence further shows that in a case almost identical to Newby's employee Pinkerton was absent on October 30 and did not call in until the afternoon to explain his absence. Unlike Newby, Pinkerton was not peremptorily discharged. Pinkerton's punishment was limited to a "first written warning."

This evidence of the disparate treatment accorded Newby, an active Union partisan, is most damaging to Respondent's defense and is not in our view satisfactorily reconciled by Respondent's assertion that the first day of work after the fire was of particular significance. While we have no doubt that Respondent was quite anxious to resume production as quickly and fully as possible, it must have known that its stated intention on the preceeding Wednesday to try to reopen on the following Tuesday could have been regarded

as only a tentative projection by some of its employees. Furthermore, the unreported absence of one man from a work force of 200 employees could hardly have represented a truly detrimental setback to Respondent. Lastly, the abrupt decision to terminate Newby finally for "lack of interest" at 10:30 a.m. of the first morning of work after the fire, when Respondent was, as it says, truly concerned about catching up on production, rings hollow when viewed in the light of Respondent's need for experienced workers and Newby's previously unblemished attendance record. Newby's first momentary showing of a "lack in interest" provoked a penalty apparently reserved, both before and after his discharge, for extreme cases of rule violations.

On this evidence, and considering as well the post-certification hostility directed by Respondent against the Union, which will be discussed below, we find that the reason given for Willis Newby's discharge on September 5, 1967, was a pretext, and that the Respondent was in fact motivated to discharge him in reprisal for his activities on behalf of the Union. We therefore conclude that his discharge was in violation of Section 8(a)(3).

#### The 8(a)(1) Violations

The Trial Examiner concluded that three incidents, alleged in the amended complaint as violations of Section 8(a)(1), did not offend that provision of the Act. The record establishes that about mid-September 1967 Vice President Weaver asked employee Giengerich "who the guys in the Union were." Giengerich named three employees who were "on the board of the committee." The Trial Examiner found that the question was essentially non-coercive, since the Union had previously furnished the Respondent with the names of employees active on the Union's behalf and there was evidence that employees had openly and freely engaged in Union activity at the plant. We differ with the Trial Examiner's evaluation. The question was a broad inquiry

into the union sentiments of the employees, indicating that the Respondent's knowledge of its employees' union affiliation was less complete than it desired or the Trial Examiner found it to be. Giengerich's cautious answer implies a trepidation on his part to supply the Respondent with any more information than it already likely possessed. In the circumstances related, we believe that the request for information as to the identity of Union members, made without justification or apparent legitimate purpose, was an unlawful coercive intrusion into employee affairs.

The record also shows that Superintendent Warren asked employee Schrock about September 30, 1967, how he felt about the Union. When Schrock said he thought it would be a good thing, Warren expressed disagreement, saying that he thought President Hussey had been in the mobile home business too long and would do something to "discourage" the Union committee and the employees. On November 30, Warren asked Schrock if he was going to a meeting of the Union committee. Upon Schrock's affirmative reply, Warren said if Schrock did so, he would be the "craziest fool that works at Liberty Coach." The Trial Examiner found that these remarks were not "implied threats of economic reprisal." In our view, such comments clearly would have tended to have an intimidatory effect upon Schrock, especially when that employee considered the remarks together. One obviously significant way in which an employer could "discourage . . . the employees" was by way of economic reprisal; and if Schrock's attendance at a union committee meeting would make him the "craziest fool that works at Liberty Coach," the implication was clear that such activity by Schrock was a perilous undertaking.

We find the three conversations discussed above to be in violation of Section 8(a)(1), and we shall amend the Trial Examiner's Recommended Order accordingly.

## Conclusions of Law

We adopt the Trial Examiner's Conclusions of Law as stated in his Decision and add the following:

"7. By coercively interrogating and threatening its employees concerning their protected activities and those of other employees, Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed them by Section 7 of the Act, and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act."

"8. By discharging Willis Newby because of his union membership and activities, Respondent has engaged in discrimination to discourage membership in the Union, thereby engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act."

## The Remedy

In addition to the remedy recommended by the Trial Examiner, we shall order that Respondent cease and desist from its unfair labor practices, and take certain affirmative action, specified below, which we find necessary to remedy and to remove the effects of the unfair labor practices.

We shall order that Respondent offer Willis Newby immediate and full reinstatement to the position which he held at the time of the discrimination against him or to a substantially equivalent position, without prejudice to his seniority and other rights and privileges. We shall further order that Respondent make him whole for any loss of earnings suffered because of its discrimination against him by paying him a sum of money equal to that which he would have been paid by Respondent from the date of the discrimination against him to the date on which Respondent offers reinstatement as aforesaid, less his net earnings, if any, during the said period. The loss of earnings under the order recommended shall be computed in the

manner set forth in F. W. Woolworth Company, 90 NLRB 289, and Isis Plumbing & Heating Co., 138 NLRB 716.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Liberty Coach Company, Inc., Syracuse, Indiana, its officers, agents, successors, and assigns, shall:

## 1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment, with International Union of Electrical, Radio, and Machine Workers, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees employed at the Respondent's Syracuse, Indiana, establishment, excluding all office clerical employees, all mobile home haulaway truckdrivers, guards, professional employees, and supervisors as defined in the Act.

(b) Discouraging membership in International Union of Electrical, Radio, and Machine Workers, AFL-CIO, or in any other labor organization, by discriminatorily discharging employees, or discriminating in any other manner in respect to their hire or tenure of employment or any term or condition of employment.

(c) Interrogating its employees regarding their or other employees' union activities, sympathies, or membership, in a manner constituting interference, restraint, or coercion within the meaning of Section 8(a)(1) of the Act.

(d) Threatening employees with reprisals for participating in union activities protected by Section 7 of the Act.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

• (a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Offer to Willis Newby immediate and full reinstatement to his former or substantially equivalent position, and make him whole for any loss of earnings he may have suffered by reason of Respondent's discrimination against him in the manner set forth in the section herein entitled "The Remedy."

(c) Notify Willis Newby, if presently serving in the Armed Forces of the United States, of his right to full reinstatement, upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due and the right of reinstatement under the terms of this Order.

The following materials constitute a portion of the documents which had been submitted to the Regional Director in the representation proceeding and which were ordered lodged with the Clerk of the Court by the Court's Order of January 16, 1969, upon consideration of Liberty Coach Company's Motion to Supplement the Record. As of the time of the printing of this Appendix, these materials had not been made part of the record herein.



## NATIONAL LABOR RELATIONS BOARD

## INVESTIGATION

## IN THE MATTER

## OF

## LIBERTY COACH COMPANY, INC.

Case No. 25-RC-3332

REPORT OF PROCEEDINGS had in the investigation of the above-entitled matter, held at the offices of Liberty Coach Company, Inc., 413 East Baltimore Street, Syracuse, Indiana, commencing on Wednesday, November 30, 1966, at the hour of 9:00 o'clock a.m..

\* \* \*

3 MR. STIEGLITZ: As before mentioned, the procedure has been undertaken by the request of the employer subsequent to the routine investigation which is normally conducted by a board agent, who in this case is Albert N. Stieglitz, Attorney, 25th Region,

4 National Labor Relations Board, who is in charge of the investigation in the above matter.

The employer has indicated to the Board that they will bear all costs for the Court Reporter, and there will be no expense or charge referred to the Board.

Again, I wish to state for the purposes of the record and clarity, that I have afforded Counsel for the employer permission to elaborate on certain points and/or ask questions pertaining to the scope of the evidence as elicited by myself, and the following record shall constitute, more or less, statements in affidavit form which shall be substitutions for the affidavits normally taken by a board agent conducting such investigation.

\*\*\*

7

J A M E S   F .   S H E A ,

having been first duly sworn, was examined and testified as follows:

E X A M I N A T I O N

BY MR. STIEGLITZ:

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. And furthermore, that the reporter will make an attestation on his service that

we are receiving an original without any authorization by either party and is sent directly to the Board without any review, and I also indicate -- this may be flexible, depending on what transpires hence forward, but as of the present -- and I will confirm this by letter -- in the event that the employer wishes subsequent to my investigation to adduce, pro-offer, or in any way submit any further evidence, briefs, positions, statements and so forth, or statements from other parties, I won't limit it. Any evidence, in other words, whatever you have that you wish to submit in behalf of any of these matters pending before us regarding this case, you will submit no later than the following Monday at the close of business, which is the 12th.

THE WITNESS: Yes. Now, what we contemplated in doing, aside from briefs or anything of that nature, memoranda, is, we are going to have the Court Reporter take testimony from some of the rank and file people because the indication is that we

should not be present while the Board questions the rank and file people.

We haven't talked to them thus far. I recognize that we want to be cautious about doing this. We have hesitated until now because of the problem that you indicated, Mr. Stieglitz, that --

55

MR. STIEGLITZ: You could expose yourself to certain unfair labor practices, Blue Flash Doctrine.

THE WITNESS: And we don't want any situation where -- in fact, we don't want any unrest in our plant, and we recognize when we call our people in to ask them questions, we don't want to know what their Union affiliation is. We don't want to know anything of that nature. We don't want to cause them any insecurity or anything else, because that hurts our problem so far as production and getting along with other people is concerned, but I do think it's necessary that we make sure that the Board has all the points as we understand them before it, and while I respect the

investigative abilities of the Board, I think that sometimes the employer is a little closer to the situation, and I hate to rely completely on the fact that everything has been brought out, when I don't know what has been brought out or what hasn't. So we will do that.

\*\*\*

56 A Let's take the literature of October 21st.

\*\*\*

59 Q Do you know when that statement was received?

\*\*\*

A I don't know. There is writing on the top of this, "Mailed to all employees."

Now, it's dated October 21st, and it says, "Received 10/24."

I would assume that this is Mr. Bechtold's writing, or that something that we got a copy of this off the floor or from some source on 10/24, October 24th. Down at the bottom of it there's a note, "Copy to John S.," and I would assume that is a copy to John Shea, "10/24/66." In fact, I'm certain that it was a copy that was sent to us on 10/24/66.

90

THE WITNESS: \* \* \*

91

Incidentally, I would like to make Mr. James D. -- since I have it now and have time -- Mr. James D. Hill's letter of October 17, 1961, a part of the record in this proceeding for the purpose of showing that United Automobile, Aircraft, Agriculture and Implement Workers of America, in 1961, stated that the management of this corporation, which is the same management which exists today, in effect, conducted an election in the most democratic manner and without pressure from the company.

Could we mark that as an Exhibit?

MR. STIEGLITZ: All right.

THE WITNESS: I think that has, in a situation of this nature, evidentiary purposes, because it shows that a Union has endorsed the conduct of this management in a prior election, which is a strong indication that the company's management is fair and wants to be fair.

\* \* \*

94 Q Then let me ask you just briefly -- and you speak  
as attorney, but from your knowledge as an attorney.  
and I believe these following things have probably  
95 been indicated to you -- is it true that the  
employer at no time during the campaign period,  
from filing the petition until the actual date of  
the balloting -- I call it the day of the election,  
October 28th -- you didn't distribute any handbills  
or any other campaign literature, is that correct?

\*\*\*

A I will say this: Our position is that we have  
never mailed any information to employees,  
distributed any literature to them; we have  
never -- Mr. Hussey hasn't spoken to any of the  
rank and file or didn't speak to any of the rank  
96 and file about the election prior to the election.  
Well, that's it.

Q You had no group speeches?

A Our position is we had no group speeches.

Q Talks, group talks?

A Or group talks.

MR. JOHN SHEA: In fact, I think  
we can go as far as --

THE WITNESS: Our position is

that our supervisors have been instructed not to interfere in any way, shape or form, not to do anything, even the slightest thing, so far as our employees were concerned.

MR. JOHN SHEA: In fact, they have been instructed not to discuss the election in any way with the employees.

MR. STIEGLITZ:

Q There were no authorized meetings, even individual meetings?

A No authorized meetings, no, none that -- our position is -- none that occurred.

Q No notice or bulletins about the election except for the Board notices, is that true?

A Yes, sir.

Q Any campaign literature?

97 A No, sir, none whatsoever.

Q And in essence it would be true to say that many of these alleged accusations by the Union have never been rebutted by leaflets or handbills or any literature or speeches by the company?

A No. We were in a position -- our position in that respect is that they were handed out at a time -- and they were of a nature -- that you

couldn't overcome them. You could stand up and engage in a big -- they were so vicious and they were the types of things like the bonus situation, all you could do is get up there and say, "We haven't cheated you."

We put the bonus computation of it on the bulletin board. Those employees that can understand it and are capable, they can determine for themselves. Those employees who cannot, just to keep the thing going, it would make it even worse. You can't explain the computation and things like that. If they don't understand them by that time, there is no way to stand up and say, "We haven't."

It would just add further fuel to the fire.

Q You haven't rebutted any of these accusations, is that correct, either by way of speeches, group talks, you haven't had any, or notices or bulletins?

98 A We haven't even done it after the election.

\*\*\*

MR. JOHN SHEA: Let me make a statement on that, Jim.

I think our position was that these matters were of such an inflammatory nature that for the employer to stand up and try to

deny these allegations, which go to the honesty and the integrity of the company and its officials, a man can't stand up and say, "I'm honest" and have any weight when his integrity and his honesty and veracity is under attack, so it was the position of the company that to attempt to do this would merely further inflame the situation which had been deliberately created by the Union with the intent of inflaming the free election atmosphere to a point that any semblance of a free election would be thoroughly destroyed.

99

And we do, of course, feel it had a substantial influence on the election, but the further inflamement would keep additional discussions going.

THE WITNESS: It would have served merely to keep the pot going, so to speak, would have helped to destroy the status of the parties and the question later who caused the problems.

\* \* \*

103

E D W A R D J . H U S S E Y ,

having been first duly sworn, was examined and testified as follows:

## E X A M I N A T I O N

\* \* \*

MR. STIEGLITZ:

Q Are you the chief executive of Liberty Coach?

A Chief executive at Liberty Coach Company.

\* \* \*

109 A . Going the other way on the thing, our Drive Away set-up is under our sales department, and of course there we have a fellow by the name of Chuck Compton, works under Bob Serschen, who handles the dispatching, dealer orders coming in and so forth, works in the sales department.

Under him, we have Clarence Darling, who is our dispatcher, and in turn --

Q Is he considered supervisory personnel?

A Yes, I would say so, pretty much. He supervises the drivers and their runs, and dispatching of them.

Q I'm going to bring him up after, just to save any qualification. I am not through with any of these subjects.

A , And of course our garage is under Clarence Darling.

\* \* \*

110 Q Would you just briefly state, if you can describe the plant works, the immediate plant works in that vicinity that would constitute the Liberty Coach Company, Inc., what establishments they have in the area? Now, the office that I am sitting in, you have got several buildings here, is that correct?

A Yes. We have three principal buildings here in Syracuse.

Q This is located in what you call what?

A Syracuse, Indiana, buildings.

Q The plant works?

A This one here (indicating), we have our floor department across the street, and we have our cabinet shop in back of the floor department.

MR. JAMES SHEA: How close are those buildings in proximity?

\* \* \*

111 A A few feet apart.

Q You have one main building, is that right, where the offices are contained in?

A Right.

Q That's where your basic production area is involved, is that correct?

A Well, no, it's all basic production area. All three buildings here are basic production areas.

\* \* \*

Q What work is performed in this building, besides -- other than the offices -- the main offices are contained here, I assume, you have stated before.

112 A Well, this is our -- this, along with the building across the street, is our main production line. I mean there's a break in the two buildings, but this is for a public street that flows through there, but this is our main production line, and the other building is our cabinet shop and metal shop.

Q Where does production begin?

A It begins in the cabinet shop.

Q In the cabinet shop?

A Yes.

Q Which is located where?

A Right in back of the floor building.

Q Which is located how far from the plant building where the offices are contained? There are three buildings we are speaking of, and you have a yard

area?

A It's really a continuous flowing line; they are separate buildings; but it's really a continuous flow of one line.

\* \* \*

127 Q Well, just for a minute, what is the range of your production people, their salary range? Are they basically at one rate?

A You mean the hourly rate?

Q The hourly rated people.

A Well, we have a starting scale of \$1.95, and over six months they work up \$2.40 an hour base rate.

Q That's the prevailing scale?

A Right, plus their bonus, production bonus.

\* \* \*

156 Q There is a time clock at the garage, is that correct?

A There is a time clock at the garage.

\* \* \*

159 Q (Continuing) -- at the plant?

Now, you mentioned a haul-away area. What type area is that?

A That's --

Q What relation does that have with the company?

A Well, it's an area south of the plant where we

store some of our trailers, and they are dispatched from there over the road.

Q How far is that located from the plant?

A About a half a mile.

\* \* \*

160 Q And who works out of that area?

A Clarence Darling is in charge of Drive Away's. We have one girl down there.

Q Darling, what is his position?

A He's the dispatcher, in charge of dispatching the truck drivers and the maintenance of the trucks, and obtaining of the permits for over-the-road moving.

Q Does the company own those haul-away vehicles?

A Yes.

Q Are they trailer trucks, trucks that haul trailers?

A Yes.

\* \* \*

165 MR. STIEGLITZ:

Q Which payroll are they under, or is it a separate one? I don't know.

A I believe they are on the administrative payroll.

Q How many payrolls do you have at Liberty Coach Company, Inc.?

A We have the two, administrative and factory.

Q Factory is all production and maintenance people?

A Yes.

Q Who is on the administrative payroll?

A Well, all of the management, the clerical, girls and so forth.

Q All the office girls?

A Yes.

Q The watchmen?

A No.

Q Those are the sweepers? I assume they are the same people we are speaking of?

A They are on the factory payroll, I believe.

Q Anyone else that's on the administrative payroll, other employees of Liberty Coach?

A The mechanics are on the administrative payroll.

\*\*\*

171 Q Now, the company also has a garage, is that correct?

A Yes.

Q Now, define this garage and where it is located. Let's start with where it's located, if you can place it in relation to the plant.

172 Let me ask you this first: How far is the plant from this office, the buildings here?

A Oh, probably half to three-quarters of a mile

from this plant.

Q And where is it located?

A It's south and east of the plant.

Q And is there a street that it's located on?

A Yes, but I couldn't give you the name of it. I don't know the name of the street.

Q South and east. Is it near the lake? I say that --

A Yes, it's over towards the lake or the canal.

Q And in between here and the garage I know there's a highway, Route 13, is that correct, it's west of Route 13?

A Yes.

Q Which is a semi-commercial and residential area before you get to this establishment?

A Yes. It's in the Village of Wawasee.

Q Well, you brought up this -- this plant is located -- is there a town of Syracuse?

A This is the town of Syracuse.

Q Is it an incorporated town?

A I believe it is incorporated.

Q It's not a city. It's a town, or it may be a city, I don't know.

\*\*\*

173

MR. JAMES SHEA: Either a city or

village; it's an incorporated body.

MR. STIEGLITZ:

Q This Wawasee is what, an area?

A It's an area, and I believe that it's a township out there.

Q This plant, as you say, where the office is, these three buildings in this area immediately here, is within the city limits or the town limits of Syracuse?

A Yes.

Q How about the haul-away area, where is that located?

A That's outside the city limits.

Q And is it part of the village?

A That's in the Village of Wawasee, too.

Q This Village of Wawasee is what, an area around the lake?

A It's the area out south of Syracuse.

Q It borders with Syracuse?

A Yes.

\*\*\*

181 MR. STIEGLITZ:

Q Mr. Hussey, the garage property that you lease

and/or rent consists of what, one building that was formerly a marina and some adjacent land, I assume?

A It was formerly a marina, and then somebody else had it as a garage.

Q And then there is some land around it?

A A small amount of land around it.

Q Are there any other offices there that any other people work out of?

A No.

Q And you have what, presently how many mechanics work there?

A Two.

Q And how do you classify these people? Do you have a job classification for them as you would an assembly line man, or --

A They are truck mechanics. I mean they are called truck mechanics. They are haul-away truck mechanics, is what we call them.

Q And what operation of the business do they fall into?

A Haul-away.

Q Under the haul-away?

A Yes.

Q Which would be under what direct operating division?

A Well, our drive away, haul-away division, Clarence Darling.

\*\*\*

188 Q Now, jumping over to the plant, what had been their hours? This could be clarified maybe by a record, and we can skip right over it fast. By the "plant," I mean these buildings here and your production maintenance. How many hours have they been working since January?

A This year?

Q Yes. Has their work day changed?

A The people here?

Q Yes.

A They have worked in January and into February, as I recollect, they worked a forty-hour week, and then as our orders from dealers, in-coming orders from dealers pick up, we begin to work longer hours, and we worked forty-eight-hour weeks, and we worked some fifty-two-hour weeks, and then at times back to forty hours. It's varied from forty to fifty-two hours. We worked a few fifty-six-hour weeks, too, I believe.

Q Are you still working those hours?

A No. During the months of November, December and January, these are our slow months.

Q They are on a forty-hour week?

189 A They are on a forty-hour week.

Q Since when have you been on a forty-hour week?

A Since the -- about the first of November.

Q The first of November?

A Yes.

MR. JAMES SHEA: Can you relate

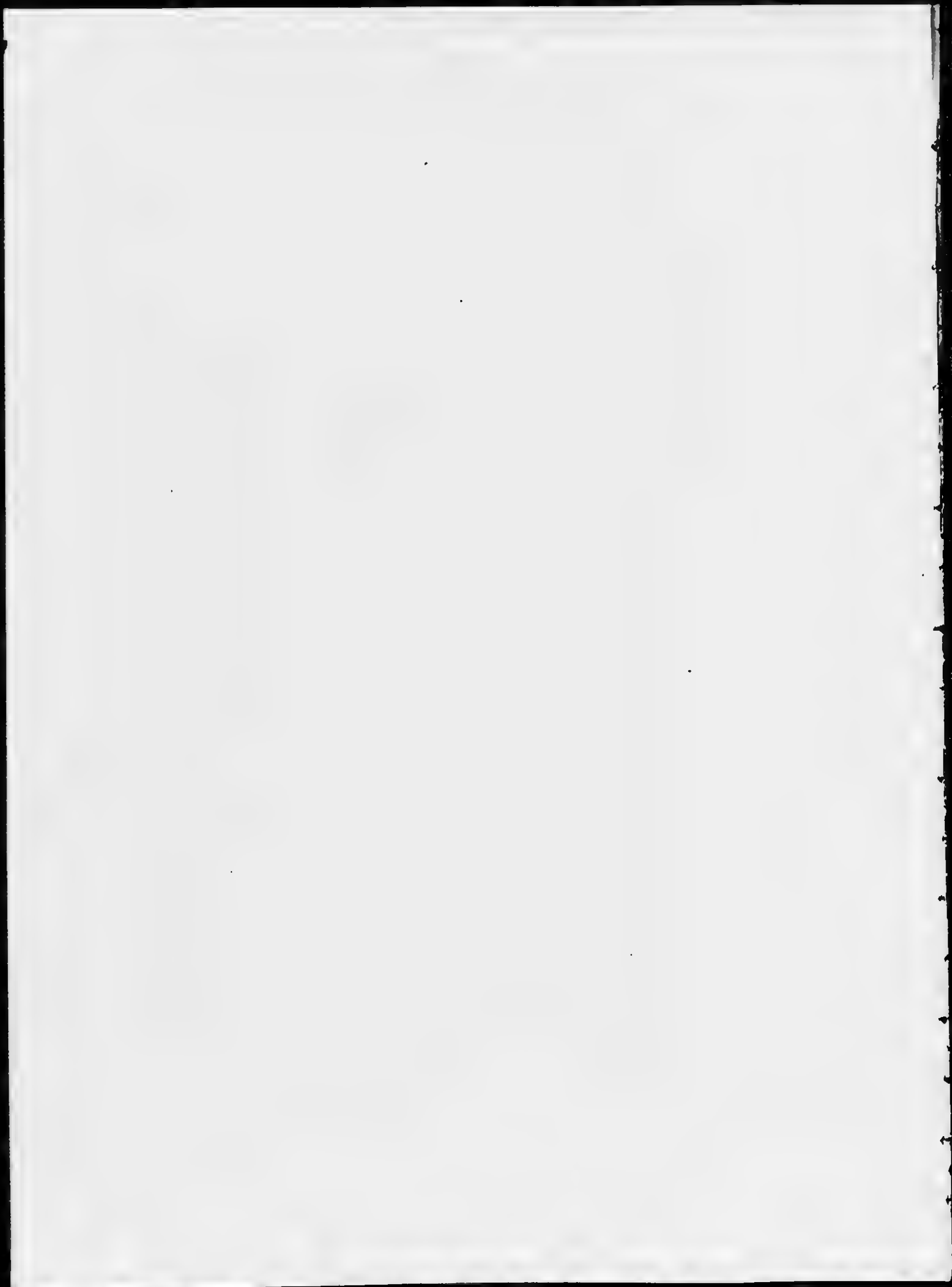
it in time to the election, possibly?

MR. STIEGLITZ:

Q This was after the election?

A Yes. We went back the week of the election -- I think we went back to about forty-four, forty-six hours, something like that, and then the following week we went to forty hours. This is customary, except last year in November, we had this big order from the government on these disaster units for New Orleans, and we did work a lot of overtime in November, and possibly the first week of December, but that was very unusual.

Q What are the plant's hours now?



A Plant hours on a forty-hour week are seven to 3:30.

Q And does everybody work these hours?

A Yes.

190

MR. JOHN SHEA: This question relates to this --

THE WITNESS: To this plant here.

MR. JOHN SHEA: The production plant.

MR. STIEGLITZ: The people you claim to be production maintenance people?

MR. JAMES SHEA: As distinguished from the garage mechanics.

MR. STIEGLITZ:

Q What do the garage mechanics work presently; what are their hours, do you know?

A I don't specifically know. They are completely separated, though, from this -- the hours that are worked here and have no relation whatsoever to the hours worked here. They have nothing to do with production.

Q Do you know how many hours they are working now?

A I can't specifically answer that.

MR. JAMES SHEA: Can you generalize

on what the hours have been and why they are that way?

THE WITNESS: There have been a lot of sixty-hour weeks over there, I know during the year here, and they are tied right to this --

\*\*\*

194 Q Do you know how many hours these mechanics were working a week? They were working Saturday. Do you know their work hours?

A I couldn't tell you specifically. They worked a lot of Saturdays and Sundays in there. I  
195 know there have been a lot of hours over there, sixty-hour weeks.

\*\*\*

199 Q Who assigns and who determines overtime work for these people you call plant people?

\*\*\*

200 A I do.

Q And who determines the overtime for the mechanics?

A Well, really, the haul-away truck drivers and Clarence Darling working together. I mean whatever the demands are for servicing those trucks.

Q Well, do they have any established overtime hours over at the mechanics'?

A No.

\* \* \*

202 Q Now, does Mr. Bechtold have anything to do with the overtime of the production people?

I am using the term "production people," meaning people in these three plants other than the truck drivers and the garage employees.

A No, he has nothing to do with these people. The real determining factor, the dealers --

Q I mean, who makes the decision who is going to work overtime on these production people?

A You mean when we are going to work overtime?

Q When you are and when you are not.

A I make that decision.

Q Do you consult with --

A I consult with the backlog of orders from dealers.

203 Q Does Mr. Auer contribute to that?

A Harold Weaver and I and Ted Auer discuss it.

Q Mr. Bechtold doesn't?

A He might incidentally get into the discussion. He's part of our top management, and he does sit in --

Q He doesn't make any decision on this?

A No. I make the decision on the hours to be

worked.

Q Who makes the ultimate decision for these garage mechanics?

A Well, Clarence Darling, to some extent. Bechtold gets into it through the accounting, seeing all of this time accumulate and expense accumulate.

\* \* \*

204

MR. JAMES SHEA: So far as emergencies or getting a truck on the road, there is no limit as to the number of hours --

THE WITNESS: Their first task is to keep those trucks rolling.

MR. JAMES SHEA: And limits all aside, I believe.

THE WITNESS: If we have need for those trucks, we have got to get them back on the road; they work to get them back on the road, Saturdays, Sundays, nights, anything that we have to do to get them back on the road, because we have to deliver these mobile homes.

MR. JAMES SHEA: Even if it were eighty hours, is that correct?

THE WITNESS: Even if it were

205            eighty hours. Of course, this time of year  
             deliveries are cut back. This is the slow  
             time of the year.

\*\*\*

206    Q        I have some fast questions here.

             What is the pay rate of the mechanics?

A        They are on \$3.25 an hour.

Q        Both of them are?

A        Both of them are.

Q        That's Mr. Kleinknight and Timmons, Richard  
             Timmons, and Max Kleinknight?

A        Yes.

\*\*\*

208    Q        Now, we already referred to the production bonus,  
             and I think we established who participated in  
             it. No, we didn't.

             You have a production bonus; now, who  
             participates in this bonus? Who receives part  
             of this bonus?

A        All of the hourly-rated in the plant.

\*\*\*

214    Q        Now, do the mechanics share in this bonus?

A        In the production bonus?

Q        The production bonus.

A No.

Q And you say the haul-away drivers do not?

A Haul-away drivers are on a rate per mile. They do not participate in the bonus.

\*\*\*

217 Q I believe there have been two occasions of a ten cent raise?

A Yes.

Q For plant-wide hourly people?

A Yes.

Q Has everybody been affected by this, everybody except clerical, I mean?

A Everybody in the plant, all the production workers in the plant.

\*\*\*

218 Q The garage mechanics?

I refer to the "garage". The garage truck mechanics, the haul-aways at the garage, they didn't receive the pay raise?

A No. I believe everybody else did then.

\*\*\*

222 Q Okay. The truck drivers, you say, were on administrative?

A The truck drivers, I believe, are on the

administrative payroll.

Q When is the work week for the plant, the hourly rate, what you call plant employees, what does the week run, the pay week?

A Oh, it ends on a Sunday night.

Q When does it start, Monday?

A It starts Monday morning, and ends Sunday night.

Q What about the garage mechanics?

A They are on a week ending, I believe, Thursday night.

Q Thursday night. When would it start, on Friday morning then? You mean from Friday to Thursday?

A Yes.

\*\*\*

230

MR. JAMES SHEA: They draw their own schedule, though?

THE WITNESS: Pretty much, yes. I don't think it's scheduling. It's really the trucks that are needed. It's according to the number of trucks they have got down there when they work.

MR. JAMES SHEA: Do they have a regular starting time?

THE WITNESS: I don't believe so,

no. I think it's just -- to the best of my knowledge, it's just when the work is needed down there. And they work different hours. They don't both work at the same time, necessarily.

\*\*\*

231 Q Now, who assigns their work? Would it be Mr. Darling again?

A He would know that the trucks are going over there. I think they just pretty much -- on the problems of trucks, the truck drivers will take the trucks over there themselves, and Mr. Darling is aware that they are going over there. They come in to him and say, "I have got some problems with my truck and I am taking it over to get it repaired."

And they determine what amount of work is needed on it.

\*\*\*

245 Q What is Mr. Lantz' position?

A Mr. Lantz is assistant purchasing agent.

You mean Mr. Bob Lantz?

\*\*\*

Q And does he purchase or order most of the parts for the garage for the haul-away vehicles, or

is he in charge of that, or how does it work?

A No. I think the mechanics --

Q The mechanics will order some?

A I believe they order most of their parts. They get them from the local Chevrolet garage.

\*\*\*

255 Q All right. Who does the parts ordering for the garage?

A I believe the mechanics do.

Q Do they do all the parts ordering?

A I couldn't say for sure. I presume they do.

\*\*\*

265 Q I want to cover the material handling first. I understand that you have a service contract with Materials Handling?

A Yes.

Q And when have you had --

A Materials Handling for our fork-lift trucks.

Q And what type of contract is this, in essence, in your own words?

266

MR. JAMES SHEA: We had a copy of it for you, Al, and I put it in the record.

MR. STIEGLITZ:

Q Is this a service contract, sir?

A Yes, service-maintenance.

Q Of what, for your fork-lift only?

A Fork-lift trucks.

Q Is that correct?

A Yes.

Q And how long has this contract been in effect?

A Oh, I believe we have always had a contract. This latest one is dated 1965, about the middle of 1965, June, I believe, of 1965, but it will -- we have a copy of it here someplace.

\* \* \*

269 Q Now, do they have any other occasion to come and service these lift-trucks?

A Yes. They could be called in. They will be called in, in case of need, during an intervening period here.

Q Have they been called down?

A I'm sure they have been called down.

Q Did they do all the repair work on the fork-lifts?

A They are supposed to do all the work on the fork-lifts.

Q Have they done it?

A There may have been other work done by people here -- I can't say this for sure -- but we have

a policy of letting these people do the work on these trucks, because it's specialized, very specialized, as related to fork-lifts, and we want these people to do that work because a very few mistakes can butcher up a very expensive piece of equipment.

270 MR. JAMES SHEA: In other words, any work that would be done here to any extent would be a minor item on an occasional basis?

THE WITNESS: Yes. Major repairs, or really anything of any repairs of even minor things should be done by these people. Certainly all major stuff, I'm sure.

\* \* \*

271 A Well, the garage was never to perform, even after it was established, to perform work on these lift trucks. They may have.

Q Did they do it?

A I couldn't say they didn't do it, but they are not supposed to do it. The work is supposed to be done by these people who are experts on fork-lifts. These things are completely different than trucks.

\* \* \*

275

MR. JAMES SHEA: Could I interject

here just for one second on something else?

We did discuss this off the record with Counsel for the NLRB, with regard to the mechanics down in the garage, the truck mechanics. The company's position is that these people, these two mechanics, are in a confidential relationship with the employer in the sense that they have the security aspects of the garage; also, that they engage in purchasing activities in very substantial quantities, independent of any real supervision in the sense that they make the decision as to what is needed, and they go down and order it, sign for it, pick it up, have it delivered, to the extent of thousands and thousands of dollars.

276

On certain items that are used down there, the purchase orders they may come up and discuss, but a great bulk -- with somebody else -- but a great bulk of the material that is purchased down there is done on their own volition, utilizing their own discretion, pledging the company's

credit, making the decisions as to what is needed inventory-wise and parts and things of that nature, and involves sums far, far in excess of their total compensation for the year.

There is nobody in the unit that the employer contends was stipulated in this election, that has any of these prerogatives so far as purchasing is concerned or that is responsible for company property and inventories and purchasing as these individuals are, or that exercise a discretion in that regard as these individuals do.

\* \* \*

285 Q Let's go to Mr. Hussey, and I want you to define the work of the mechanics at the garage.

MR. JAMES SHEA: To the extent you can, to your personal knowledge.

A Well, they are truck mechanics, working on trucks, skilled truck mechanics.

Q What do their jobs entail?

A Their jobs entail working on the haul-away trucks.

\* \* \*

290 MR. STIEGLITZ: I plan to get into that, Counsel. I just want to ask you this:

In your letter dated November 21 to the Board, you indicated in the year 1966, through November 10, 1966, the employer's truck mechanics worked a total of 4,515 hours.

MR. JAMES SHEA: Right.

MR. STIEGLITZ: Is that total working hours period, time on the clock?

MR. JAMES SHEA: That's time on the clock.

MR. STIEGLITZ: Okay. Of which 4,393 hours were devoted exclusively to haul-away trucks.

MR. JAMES SHEA: Well, I should say exclusively to haul-away trucks, inventory controls, purchasing, et cetera.

291 MR. JOHN SHEA: Exclusive of any work performed on the other vehicles.

\* \* \*

295 Q Now, they order parts, don't they, for repair?

A They would order parts for repair.

Q Such as pistons?

A Everything, really. They know what they need. They are the only ones that know.

Q Do they order when the repair needs become effective, or do they order an advance and keep stock?

A Well, on some of the items they keep a stock on it.

MR. JAMES SHEA: Who determines that?

THE WITNESS: They do. They determine what they need, things like spark plugs and that, there is a storage kept of that. I believe they keep an extra motor over there for a Chevrolet truck.

We have mostly Chevrolet trucks. I believe they keep an extra rear end over there, too.

MR. JAMES SHEA: Probably points, distributors, things like that?

THE WITNESS: All kinds of small parts they keep over there in inventory.

\*\*\*

296 Q Who gives them instructions about ordering? Do they receive any instructions at all?

A I think it's been a development over the years that they have been there that they --

Q They have a full Carte Blanche on it?

A Pretty much.

\*\*\*

299 Q Does the purchasing agent order any parts for them?

A I don't believe so, no.

Q In other words, all the parts are ordered --

A They would order all the parts.

\*\*\*

303 Q Do they have authority to purchase these parts from anybody they want?

A Well, they have the authority to purchase at the best price available, and if they can get a better price --

Q They are not limited to any establishment?

A No. But it -- as a practical matter, a great part of it, because we have a lot of Chevrolet trucks, are ordered from the local Chevrolet garage.

\*\*\*

313 Q Back to the mechanics, who is responsible for the property that's stored in the garage?

A The mechanics.

\*\*\*

Q And what responsibility are they entrusted with?

A Well, they are entrusted with the security for the parts that are out there and accounting for the parts that are used out there. In other

words, they have to show through their work records that they buy these parts, and they are taken off of the perpetual records and used on the repair orders.

Q Do they have keys to this establishment?

314 A They have keys to the establishment. They are the only people that have keys, outside of a key that is in our master file of keys, kept in the safe.

Q They are the only people that work there, is that right?

A That's right.

Q While they are working there, they are going to look after the property?

A That's right.

\*\*\*

319 C What exactly have these people, these mechanics, been told about the security of the building and the premises out there?

A Well, they have been told to keep the place secure.

Q They have been given the keys?

A They have been given the keys and told to lock it up when they are not there and told to watch it that there is no theft while they are there, and to report any theft that might occur, you

know, if it was broken into or anything like that.

\*\*\*

332 Q Do they have authority to go to any firm in the area and buy any item on credit?

A As related to that operation.

Q You have given them this authority?

A They have that authority, yes.

Q Did you give them this authority?

A Yes, I gave them that authority in the beginning.

\*\*\*

346 MR. STIEGLITZ: \*\*\*

347 Was this subject brought up in the pre-hearing conference when the stipulated agreement was effectuated between the employer, the present employer, and the IUE? When you signed the election agreement, was the subject of these employees brought up, discussed, to the best of your knowledge?

MR. JAMES SHEA: I have no personal knowledge of any discussions.

\*\*\*

MR. JAMES SHEA: I don't even know if there was such a -- in fact, a hearing.

I think there was just a stipulation signed.

MR. STIEGLITZ: Was this mailed  
in?

MR. JOHN SHEA: Yes.

\*\*\*

353 Q Mr. Hussey, did you put a notice of election on  
the garage?

A No.

Q Do you know if one was put there?

A No, there shouldn't have been.

Q But do you know it personally if there was?

A No. I know that it wasn't.

Q I want to make sure whether you know or you  
don't know.

A There is no need to post it down there, because  
they were not a part of the unit as far as we  
were concerned.

MR. JOHN SHEA: I would like to  
cover one matter we touched on briefly.

Mr. Hussey, were you familiar  
with the stipulation that was signed in  
connection with the bargaining unit prior  
to the election?

THE WITNESS: Yes.

MR. JOHN SHEA: You were familiar with the wording on that stipulation?

THE WITNESS: Yes.

MR. JOHN SHEA: And that was prior to its execution by Liberty Coach Company?

THE WITNESS: Yes.

MR. JOHN SHEA: At the time it was discussed, was it the understanding of the company all responsible personnel associated with the execution of that agreement, was it their understanding that that agreement pertained to these three plants here?

THE WITNESS: These three buildings.

MR. JOHN SHEA: And did not include the Liberty garage?

THE WITNESS: Yes.

MR. JAMES SHEA: Three buildings?

THE WITNESS: These three buildings. It applied only to these three buildings.

MR. JOHN SHEA: And did not apply to the Liberty garage?

MR. STIEGLITZ: You are saying

this from what factual basis?

355

THE WITNESS: From our understanding --

MR. STIEGLITZ:

Q Between whom?

A Of myself and Mr. Bechtold, and people concerned with the signing.

Q Was this conveyed to the Board Agent?

A Well, there was a discussion with the Board Agent as to the specific --

Q Were the garage mechanics in the course of your conversation discussed?

A No. We didn't feel there was any need to.

Q It wasn't discussed with the Board Agent? Was it discussed with the Union?

A No.

MR. JAMES SHEA: Only by way of information of the eligibility list.

MR. STIEGLITZ: In that view you stated your position?

MR. JOHN SHEA: As far as the intention of the company, and the understanding of the personnel of the Liberty Coach Company, responsible in connection

356

with the signing of that agreement, was that the understanding of those personnel at that stipulated unit did not include the Liberty garage.

THE WITNESS: That was our firm understanding.

\* \* \*

357

MR. JOHN SHEA: I would like one other question, too.

Mr. Hussey, in the stipulation, there is an exclusion that relates to the over-the-road truck drivers, a specific exclusion as to those over-the-road truck drivers.

THE WITNESS: Yes.

MR. JOHN SHEA: Now, is there a reason why the over-the-road truck drivers were specifically excluded from the unit described --

THE WITNESS: Yes.

MR. JOHN SHEA: (continuing) -- as the three buildings in this area?

THE WITNESS: Yes.

MR. JOHN SHEA: What was that

reason that they were specifically excluded?

358

THE WITNESS: Because they come up to this plant in Syracuse from time to time; they are picking up mobile homes here, they are up here for various other purposes, and there is a mingling back and forth -- or back and forth between Drive Away and up here -- and we did not want -- we wanted to assure that these people were specifically excluded from this Syracuse plant.

MR. JOHN SHEA: Do they come up here on a regular basis?

THE WITNESS: Yes.

\*\*\*

362

ERROLL W. BECHTOLD,

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. STIEGLITZ:

\*\*\*

Q Would you please state your present position with Liberty Coach Company, Inc.?

A , I'm the secretary and assistant treasurer.

\*\*\*

367

Q Do the garage mechanics have any regular hours?

A No.

Q Have they been on a seven-to-3:30 basis recently?

A No. There are no scheduled hours.

Q No scheduled hours?

A If they work seven-to-3:30 or seven-to-4:00 for a couple of days in a row, it is because of their requirements out there.

\* \* \*

379 Q Well, have there been any, where you have had to contact the mechanics?

A I can't think of any right now.

Q They are supposed to order parts? They do do some parts ordering, is that correct?

A They do all the parts ordering.

Q All right. If they don't order a part pursuant to catalogue fleet price and they make a mistake and order a higher priced, do you catch this in your audit; do you check these things?

380 A No, we don't check those things, because we have to rely on them. They know where they have to go to get parts. They know that if they need it today, that they are going to have to get it, regardless of whether they have to pay a little premium to get it today instead of a week from now.

\* \* \*

403

MR. JAMES SHEA: How about on actually ordering things, do both of them order?

THE WITNESS: Oh, yes.

404

MR. JAMES SHEA: Both of them do purchasing?

THE WITNESS: Both of them do purchasing.

MR. JAMES SHEA: And both of them keep records?

THE WITNESS: Yes.

MR. JAMES SHEA: Do they work different hours?

MR. STIEGLITZ: I wish you would just wait until I finish.

MR. JAMES SHEA: You are asking a witness here of yours --

MR. STIEGLITZ: You will get an opportunity.

MR. JAMES SHEA: You always say that, but I never get an opportunity. We go on and on and on.

MR. STIEGLITZ: I told you you can do it. You can take your own affidavits

I want to get through here today. Try to, anyway.

\* \* \*

407 Q Do they do all the parts ordering?

A Yes.

Q For which vehicles?

A Well, for the Drive Away vehicles.

Q Are any parts ordered for either the fork-lift trucks or the tractors or the service or the van trucks or the pick-up trucks, ordered by people other than garage mechanics?

A To my knowledge --

Q By company personnel.

A To my knowledge, our Liberty garage personnel never order parts for any but Drive Away. Now, if they do, it's beyond my knowledge, but I am reasonably sure they don't.

MR. JAMES SHEA: I think he asked you another question.

You asked him do other people other than Liberty people order those parts?

403 MR. STIEGLITZ: You inverted it.

MR. JAMES SHEA: If you go back, I think he inverted it.

MR. STIEGLITZ: I will ask you

this:

Q Do any other company personnel order parts for those vehicles other than the garage mechanics?

A Yes. You are talking about vehicles for the plant here, right?

Q Yes, the lift trucks. This is exclusive of Materials Handling. I don't want to get into that. The lift trucks, the tractors, the van, the service trucks, the pick-up trucks, who orders repair work done for those?

A To my knowledge, they are ordered right here at the factory.

Q Who would order them?

A I presume they would be ordered through Ted Auer and through the purchasing department for records and control.

Q And where would the repair work be done on them?

A The repair work? There isn't much repair work. Some is done here. The biggest share of it is done outside, in -- well, say tractors, they take them over to Napanee. Lift trucks, while the major part of it is done here, it's done

by, I believe, Materials Handling Equipment Company from South Bend or Mishawaka.

\* \* \*

411 Q Have you ever given them any instructions about ordering parts on credit?

A Only to the extent that they should shop their prices as best they can.

Q And they would determine the prices themselves?

A Right.

MR. JAMES SHEA: Counsel, will you ask him whether they go out and purchase goods from wherever they want?

MR. STIEGLITZ: You ask him that.

MR. JAMES SHEA: Do they actually, as a matter of fact? You have testified you haven't specifically said to go out and do that. You have given them the orders to go out and shop prices, but as a matter of custom, do they go out to various places on their own volition and make the decision where they are going to purchase?

412

THE WITNESS: Yes. I believe that was covered earlier, before you were here, that they do their own buying.

MR. STIEGLITZ: Yes.

Q You have never restricted them on any particular establishments?

A No. Of course the nature -- the type of trucks would, in itself, indicate that a large part of it, say, would come from Chevrolet, because the largest number of our trucks are Chevrolets.

Q And they have an authority then to go out and open up a new account in any store they desire?

A That's right.

Q Have they done this without permission?

A Not without permission. They have the authority.

Q They have the authority. Do they have to check with anybody?

MR. JOHN SHEA: Have they used this authority to open accounts, to your knowledge?

THE WITNESS: Well, to name a specific establishment, I couldn't do that at this time, but yes, I would say they have used their authority to that extent.

\*\*\*

414 Q They can exercise their discretion as to which parts?

A Certainly.

Q Without consulting anyone?

A Certainly. The records will prove that.

\*\*\*

415 Q Do these men out in the garage have authority to order parts for any of the internal rolling stock of the plant? And by "internal rolling stock," I mean fork-lifts, pick-ups, the tractors.

A No.

Q They have no authority?

A No.

Q Have they done this in the past?

A Well, I stated before I have no knowledge of it.

MR. JAMES SHEA: If you did have, would you tell them to stop?

416 THE WITNESS: I certainly would, because I don't think it's any of their responsibility. They understand that their responsibility is to maintain the Drive Away trucks, to keep them on the road, and all the functions that are involved in handling a separate establishment.

\*\*\*

425 Q When they are at work, are they responsible for

security to watch out for vandalism and protect the property?

426 A I think that's inherent in their responsibilities as operators of the garage.

\*\*\*

Q Do the police patrol that area at times when there is no one working there?

A Well, I have no knowledge of any such patrols, although since that is not in city of Syracuse, why, that is subject to the sheriff's department rather than the police.

427

\*\*\*

437 Q Now, regarding the Materials Handling Company which is out of Fort Wayne, I understand you have a service agreement with them pertaining to the repair and maintenance, preventive maintenance, on your fork-lift trucks, is that correct?

A Yes.

\*\*\*

439 Q Could there have been a period, is there a possibility there was a period, when there wasn't a contract on fork-lift trucks, or are you pretty certain that it was always there, to your knowledge?

A Well, when you say specifically "a contract," I couldn't answer that specifically, but I will say that to my knowledge, we have always had regular maintenance by Materials Handling on lift trucks.

Q Would that go beyond merely preventive maintenance? Would they, say, like put a motor in and exchange  
440 motors and hydraulic pumps?

A Oh, yes.

\* \* \*

455 Q Now, let's go back, and I will ask you the question again. What's the policy for the mechanics to work on -- what do they work on? What does their work entail? When you hired them, what did you tell them? They must have some policy. You have been going all around. I just want to know what it is.

A They are hired to operate the Liberty garage. The Liberty garage was set up solely for the Drive Away vehicles.

Q And they have been instructed not to work on any other vehicles?

A I can't say that they were instructed never to work on other vehicles. I can only say that I

believe that the few that they did work on got into the operation quite by accident, quite on an emergency basis, and certainly I was not aware of it, that it was a continuing thing, and I don't believe it was a continuing thing in any volume, as the record will prove.

\*\*\*

474

MR. JAMES SHEA: The only thing I would like to make an offer of proof on, I think it would be helpful if Mr. Bechtold testified to his own knowledge that he is familiar with the fact that this company had a policy of instructions around for the people not to interfere in any way with the election or with the campaigning of the Union, and that it didn't want to.

MR. STIEGLITZ:

Q Is that true?

A That is very true.

\*\*\*

477

C L A R E N C E D A R L I N G ,

having been first duly sworn, was examined and testified as follows:

E X A M I N A T I O N

BY MR. STIEGLITZ:

Q Would you state your name and position with the company?

A Clarence Darling. I am dispatcher.

\* \* \*

480 Q What authority do you have over the garage mechanics?

A Oh, if I need a truck out, I can ask them to -- you know, to get that one out for me. I mean, as far as authority, I don't have -- I'm the --

Q Are you their boss?

A Yes.

\* \* \*

Q You are their boss? I mean, they work under you?

A Well, they run it -- how can I put it? They run it on their own, actually, you might say, but as far as the company, through them, it comes through me. I mean actually, I'm the boss, but I mean as far as telling them which truck to work on, no.

Q You just as a matter of course what, send trucks out there?

A Yes.

Q What type of trucks are these?

481 A Drive Away trucks.

\* \* \*

482 Q How many times a week do you have occasion to go over to the garage?

A Well; that depends on how busy I am.

Q Do you go over there very often?

A How often is that? I mean --

Q Do you go over there once a day?

A If I am busy, I don't go over there at all during the day, and if I want to see how many trucks he has over there or something, I stop over there on the way over here.

Q You don't spend very much time over there?

A No.

\*\*\*

484 Q Now, who is your immediate boss? Who do you directly report to?

A Chuck Compton, I guess.

Q What is his position?

A Sales.

\*\*\*

485 Q Who orders the parts down at the garage?

A They do.

Q Do they consult you about ordering parts at all?

A No.

Q Do you have any say in the part orderings?

A What way do you mean?

Q Do you tell them what parts -- you don't tell them what parts to order or anything like that?

A No.

\* \* \*

486 Q In other words, you don't order any parts for the garage, is that correct?

A That's right.

\* \* \*

515

MR. JOHN SHEA: Clarence, in connection with the two men in question at the garage, in the course of their duties, do they have the responsibility and the occasion to interview vendors, sales personnel coming in to sell things to them?

516

THE WITNESS: Yes, that's -- most of them, that's the only place they come.

MR. JOHN SHEA: And what do they do in that connection; do they sit there and go over the description of the product being sold and the price and so on and make decisions with respect to purchasing it?

THE WITNESS: Yes.

\* \* \*

540

E D W A R D J . H U S S E Y ,

having been first duly sworn, was examined and testified  
as follows:

## E X A M I N A T I O N

BY MR. STIEGLITZ:

\* \* \*

561

Q Before we talk about these things, maybe it  
would be best if you could briefly explain for  
a layman like myself the computation of the  
bonus and how it works.

A Well, this was set up on a -- the bonus is paid  
on the number of mobile homes produced that week  
over and above a base amount of mobile homes at  
four cents per hour for each mobile home in  
excess of the base number, so that you arrive at  
a number, a quantity of production bonus mobile  
homes for that week, on which there is paid  
four cents an hour per bonus mobile home.

\* \* \*

571

MR. JAMES SHEA: Do you have men  
that are capable out there in the plant,  
your rank and file, are there men that are  
capable of determining whether that's  
correct or not?

THE WITNESS: Yes, there are some

out there. I think the older men perhaps tend to understand it better than some of the newer men.

\*\*\*

577

MR. JOHN SHEA: In other words, this program has always been designed, as I understand it, to get the maximum number of coaches out of the doors, is that correct?

THE WITNESS: Yes.

MR. JOHN SHEA: Is this particularly vital during the Fall of any given year, that the maximum production be obtained?

578

THE WITNESS: Yes it is, because those orders that are in there at that time, have to be delivered, or we are going to lose them. You are facing into the Winter months, and the closer you get to November and December and January -- which is the low period -- the dealers will tend to reject those coaches if you don't get them delivered in time for their selling season

\*\*\*

582 Q In other words, the number of employees will  
583 affect the bonus, is that correct, on a weekly basis?

A Yes. As we add employees, add to the original base.

Q In other words, production quota goes up?

A Yes, on the representative units. In other words, on a 50-foot, 10 wide, it was 30 back then. If we added four employees, that original base becomes 31. I mean we keep the same original base, but we add one to the forty-hour base week.

Q Do these computation sheets show the number of employees?

A No.

Q Then how would I know how the number of employees affected the bonus rate by looking at this computation sheet?

A Well, the base --

Q Just in your own words.

A See, down here we have the base number (indicating).

Q Which is?

A This is for a forty-six-hour. Now, all this was based on a forty-hour week. Like we said, 30 was a base for a forty-hour week.

Now, if we worked a forty-eight-hour week, we would add one fifth of 30, as the eight

hours is -- you know, the per cent that eight hours is to forty hours. That's one fifth, so we would add one fifth to the base of 30, as an example, which would be 36. In a forty-eight-hour week our base on that original 50 by 10 goes from 30 to 36, because we are working an extra day, do you see?

\* \* \*

603 Q When do you reach your peak, do you know, generally?

604 A Well, the peak comes through the Summer. It goes through the Spring, Summer and the early part of the Fall, generally. Now, this can vary from that somewhat, but in general that is the pattern of the industry.

Then in November and December and January is the slack season.

\* \* \*

629

MR. STIEGLITZ: I want to finish.

In response to Mr. Shea's question, let the record show that I will not have time to see Mr. Weaver, because Mr. Weaver -- the possible evidence and testimony that Mr. Weaver could possibly

testify to was recently revealed to me,  
 at a time approximately two hours ago, and  
 I am unable to take it, as it is Friday,  
 and I have been here for four days, and  
 if counsel for the employer wishes to send  
 a statement in for Mr. Weaver along with  
 his other evidence, which I will cover  
 later, which I don't want to get into now,  
 the Board will review it.

\* \* \*

653

MR. STIEGLITZ: I think we can

cover Mr. Auer presently, and if time  
 permits, as far as we can get with Mr.  
 Weaver, and again I say this for the record,  
 that if you wish to take a statement from  
 him, you can, and submit it to the Board  
 and it will be considered with all the  
 other evidence.

654

\* \* \*

655

T E D   A U E R ,

having been first duly sworn, was examined  
 and testified as follows:

E X A M I N A T I O N

BY MR. STIEGLITZ:

\* \* \*

656

Q And will you state your present position with Liberty Coach?

\* \* \*

A Plant Superintendent.

\* \* \*

722

THE WITNESS: This man Ronny Heffner called me when he received that letter with his name on as -- on the Union paper, and he said, "Ted," he says, "they put me on as an organizer," and he says, "I didn't know nothing about it," and he said, "me and my wife is just about sick over it."

\* \* \*

723

MR. JAMES SHEA: Did he say anything about the contents of the letter, that he believed them or didn't he believe them, or that he endorsed what was said there?

THE WITNESS: I mean -- the only thing he said, he said he didn't know his name was on there, and he didn't believe in the letter, see.

\* \* \*

732

Q Did anybody else come up to you?

A Jim Scott come up to me, and after -- this is

after the letter was out -- and he said, "Ted," he says, "I didn't know anything about that stuff in the letter about you," he said, "because I don't go for that dirty stuff."

I said, "Thank you, Jim," and walked away. That's all that was said.

\* \* \*

755 Q Were you given any instructions by Mr. Hussey to interfere -- or anybody else in management -- to interfere in Union activities?

A No, sir.

756 Q Or election activities?

A No, sir.

Q Were you given instructions not to interfere?

A Yes, not to interfere.

Q Insofar as the working foremen, were they advised that they weren't to interfere?

A I advised all the working foremen to leave well enough alone, they didn't have nothing in this, this was between the employees.

\* \* \*

757 Q Gary Baker said what to you and when?

A That he never give them permission to put his name on there, said they put that on there, and

that was done in my office. He come up there when he was taking the mail one day and stopped and told me that.

MR. JAMES SHEA: You didn't ask him, though?

THE WITNESS: No, sir.

\* \* \*

771

ERROLL W. BECHTOLD,

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. STIEGLITZ:

\* \* \*

780

MR. JOHN SHEA: Did you place any notice at the garage, any election notice, or was any placed at the Liberty Garage to your knowledge?

THE WITNESS: No. I'm positive of that.

\* \* \*

785

MR. STIEGLITZ: Thank you very much.

\* \* \*

786

I would like to say something about the evidence, also. As indicated earlier in the record, and I intend will be confirmed by mail -- I hope to confirm it, but in the event it isn't -- the employer has been requested to submit all other evidence, testimony and affidavits in the case indicating what certain witnesses will testify and/or all other documentary evidence and all other records which the record will note has come in the course of this investigation, will be submitted to the Board no later than the close of business on Monday, December 12, 1966.

787

\* \* \*

788

MAX KLEINKNIGHT,  
having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. JAMES F. SHEA:

\* \* \*

811 Q He doesn't attempt to superintend you in the --  
let's take your hours, as an example.

You don't work the same hours as the  
factory over here works, do you?

A No, sir.

\* \* \*

821 Q Now, can you name some of the -- you people do  
purchasing out there, is that right?

A Right.

\* \* \*

824 Q How about Bowman Products Division?

A Yes.

Q Who do you deal with there?

A They have a salesman that calls on us.

Q What's his name?

A Oh, Jack Francis.

Q Does he call on Mr. Darling, or does he call on  
you people?

A He calls on us.

Q Where does he call on you at?

A At the garage.

Q What do you discuss with him?

A We buy a lot of parts from him.

Q Do you discuss prices with him?

A Yes; sometimes.

Q When you buy parts down there, do you shop the prices?

A A lot of times, yes.

825 Q To determine where you can get the best price, is that correct?

A Right.

Q How about Chet Ried's Car Parts?

A We deal with them very little.

Q But you do deal with them?

A Once in awhile.

Q That's at Ligonier, Indiana?

A That's uptown here.

Q Well, apparently they have --

A They have a store in Ligonier, also.

Q That may be the main store, is that correct?

A I believe it is, yes.

Q Have you ever been there?

A In Ligonier?

Q Well, either?

A I have been in the one here.

Q For what purpose?

A To buy parts.

Q For whom?

A Liberty Coach.

Q And could you tell me who you dealt with there?

A . Paul. I believe his last name -- I think it is Ried's son. Paul Ried, I believe.

826 Q You don't tell Mr. Bechtold when you are going up there?

A No.

Q Mr. Darling or anybody else at Liberty, do you?

A Right.

Q You just go up there?

A Yes.

Q And make the determination of what's necessary and you go up there and buy it?

A Right.

Q And you sign Liberty's name to the purchase order?

A Sign my name on their bill.

Q . You sign their name to their bill?

A Yes.

\* \* \*

845 Q Well, other than, say, rank and file. I don't care about a --

A Right.

Q (Continuing) -- a man that, you know, that had

nothing to do with Liberty management, or anything of that nature, or like a fellow, somebody from somewhere coming over and telling you that you should not have a Union. I don't want to know that.

A No.

Q They haven't?

A No. They hadn't then, no.

Q The company has never made any promises, anything of that nature?

846

A No, sir.

Q Any threats?

A No, sir.

Q Have you heard rumors of any threats from the company with respect to threatening anybody or trying to take punitive --

A I have heard rumors. I have heard rumors, all kinds of rumors.

Q What is the nature of rumors you have heard?

A Well, I mean just, of course, at any time, anything like this comes up with this many men, there's rumors out. I heard rumors that the bonus was going to stop, and all the privileges were going to be taken away and everything, but,

you know, this is strictly rumors.

\* \* \*

856 Q Mr. Kleinknight, you spoke, you know, of the  
fact that you wanted to be careful on who had  
857 a key?

A Right.

Q Because of your own material that's out there.  
Also with respect to your responsibility.

A Right.

Q And it is your responsibility to see that that  
place is locked up, isn't it? Yourself and  
Mr. Timmons?

A Yes.

Q And to see that the windows are secure?

A Right.

Q And it is your responsibility, if anything were  
missing there, you would be the people that would  
know about it, isn't that correct?

A Yes.

Q And you keep a check on that type of thing?

A Yes.

Q And you are responsible, actually, you and Mr.  
Timmons, for security out at the garage,  
aren't you?

A Right.

Q So far as other personnel coming around that garage, it is your responsibility to see that they don't take anything, isn't that correct?

A Right.

\* \* \*

873 Q You have been pretty much kind of a -- well, you have had a lot of your own private enterprise in your life, haven't you?

A Right.

Q Let me ask you this:

Isn't it a fact that your endeavors over there at the garage put you in a position that more closely approaches being in your own business than, say, other places?

A Oh, yes; definitely. I mean, it's very similar to being in business for yourself, and you have people to answer to, but we are pretty well our own bosses out there.

874

Q And you make many, many decisions, don't you?

A Right.

Q Just exactly as you would.

Let me ask you this:

Wouldn't ninety-nine per cent of the

decisions that are made out there be the decisions you would make in your own business?

A That's right.

Q And the one per cent left is probably a thing that, as an example, we talked of, where it is really like dealing with a customer?

A Yes.

Q Which, in a sense, you are limited in your own business, too?

A Right.

Q Actually, you probably are questioned less about the number of hours that you spend on a particular item in your operation out there at Liberty Garage than you would be if you had an independent truckman come into your service station and you spent a lot of time, isn't that correct?

A That's right.

\* \* \*

876 Q Let me ask you this:

Insofar as the bulk of your work is concerned, it's spent on haul-a-ways, isn't that correct?

A Right. I would say at least ninety-five per cent of it.

Q Right.

A And now one hundred per cent of it.

\* \* \*

881 Q Okay.

Now, in the ordinary course of your day, except for an unusual occurrence, you don't have contact with any of the personnel of the -- the management personnel of the plant, the people engaged in production, do you?

A No, I don't.

\* \* \*

886

R I C H A R D T I M M O N S ,

having been first duly sworn, was examined and testified as follows:

E X A M I N A T I O N

BY MR. JAMES SHEA:

\* \* \*

912 Q Actually, do you know, there, you people pretty well operate that place, you and Mr. Timmons, as independent garage operators would operate, isn't that correct?

A Yes.

\* \* \*

913 Q (Continuing) -- if it isn't so, that you people down there have been pretty well independent, so far as an operation is concerned, and that you essentially operate that thing like you would your own garage?

A Yes.

\* \* \*

914 Q Now, insofar as your work on those trucks was concerned, or fork-lift trucks or tractors, or something of that nature, was most -- where was that performed?

A There at the garage.

Q At the garage?

A Yes.

Q Has there been an occasion where anybody would come down here and do the work?

A Yes.

Q Where was most of that work done?

A: There at the garage.

Q How much, by way of per cent, would you guess?

A About ninety-eight per cent of the truck work is done down there, and the rest, that would be on the fork-lifts, about two per cent of our actual work would be on fork-lifts and tractors.

Q Something other than haul-a-way?

A Yes.

Q Well, as to that two per cent, where would most of it be performed?

A At the garage.

\* \* \*

91? Q Your primary responsibility is what down there?

A It is over the garage, and keep the work orders up and the work on the trucks.

Q But keeping those trucks doing what?

A Maintenance.

Q Yes, but keeping those trucks -- keeping the haul-a-way trucks doing what?

Hauling trailers, isn't that right?

A Yes.

Q Now, your hours. They have no relationship to factory personnel here, do they?

A No.

- Q And you work very often when the factory is not working, is that correct?
- A Oh, yes.
- Q And there's no tie-in between your hours and the factory hours, is there?
- A No. I'm not connected with the plant at all.

\* \* \*

923

(Record read by the Reporter as follows:

"Q Do you have anybody looking over your shoulder down there, anymore than you did when you were operating your own service station?

"A No.

"Q Do you feel that you run an independent operation down there?

"A Yes.")

THE WITNESS: We pretty well run her by ourselves.

\* \* \*

923

- Q Your operation is tied in with the over-the-road truck operations, substantially, isn't it?
- A Yes.
- Q Your problems are actually closer to the truck drivers' problems, aren't they?

A Yes.

Q Than they are over here?

A Yes.

\* \* \*

923 Q Your hours are much more irregular than the  
plant's hours?

A Yes.

Q And ninety-eight per cent of your work deals  
solely with haul-a-way operation?

A Yes.

Q And that comes generally from the Sales Department,  
doesn't it?

930 A Yes.

\* \* \*

Q Do you have a key?

A Yes.

Q To the garage?

A Yes.

Q Does Mr. Kleinknight?

A Yes.

Q Does anybody else, to your knowledge?

A Yes. There's one up here in the safe.

Q In the safe?

A Yes.

Q Is that kept with the master -- all the master keys?

931 A Yes.

Q Do you know whether anybody has ever taken that out of the safe?

A Not to my knowledge, they haven't.

Q Have you ever seen anybody use a key in that door, other than you and Mr. Kleinknight?

A No.

Q Other than, say, your predecessor, or his predecessor?

A Nobody that I know of.

Q You have three thousand dollars worth of tools stored there?

A Yes.

Q And he has approximately the same?

A Yes.

Q And the company, does it have materials stored there?

A Yes.

Q And equipment?

A Yes.

Q How much would you say was involved there?

A About fifteen thousand dollars.

Q Fifteen?

A Yes.

Q Total equipment and everything?

932 A Yes.

Q Could it be a lot more?

A It could be. I never stopped -- I imagine in parts, there's quite a few parts in there. Probably more.

Q Probably more?

A Yes.

Q Then you have got the equipment itself?

A Yes.

Q In other words, your estimate is based upon the amount of parts that are stored there, is that correct?

A . Yes.

Q Without respect to lifts and things of that nature?

A Yes.

Q And big tools?

A Yes.

Q Who is responsible for the security of that?

A I am.

Q You and Mr. Kleinknight?

A Yes.

Q You and Mr. Kleinknight. Who's responsible for securing the place?

A I lock it up at night.

\* \* \*

933 Q Mr. Kleinknight locks it up at night also, is that correct?

A Yes.

Q And Mr. Kleinknight and you open it, depending, in the morning, on who gets there first?

A Yes.

Q You are responsible for keeping, you and Mr. Kleinknight are responsible for keeping that material safe from everybody, isn't that correct?

A Right.

Q And for -- who makes -- who takes care of the records so far as the inventory is concerned?

A Both of us.

Q Both of you?

A Yes.

Q And you check -- who takes the physical inventory down there?

934

A Oh, I do most of the time.

Q Does Mr. Kleinknight on occasion?

A Yes.

Q And you are responsible for seeing that those physical inventories tie in with your card inventories?

A Right.

Q That you have been keeping?

A Yes.

Q That's not only from a standpoint of having enough parts to operate, but making sure the parts are there?

A Yes.

Q Let's go down. Do you have in your purchasing activities, both you and Mr. Kleinknight do purchasing?

A Yes.

Q And do you have to go out and call on suppliers?

A No. They call on us there.

Q Always?

A Just about. We go up here to Chevrolet once in awhile and tell them what we need and order it, but sometimes we run to Goshen and pick up stuff ourselves when we are in a hurry.

935 Q And how about telephone calls to suppliers?

A Yes.

Q Do you make those?

A Yes.

Q You don't consult with anybody when you make those telephone calls, do you?

A No.

Q When a salesman comes in, does he come into your garage down there?

A Yes.

Q And you interview them down there?

A Yes.

Q And do you shop your prices?

A Yes, sir.

Q Nobody tells you how to shop them, do they?

A No.

Q In fact, you spend that money based upon your own judgment, don't you?

A Yes.

Q Do you or don't you?

A Yes, we do.

Q And a lot of money, isn't that right?

A Yes.

Q Would you say more money than you spent, would spend, when you ran your own independent operation?

958

A Yes.

Q Your responsibilities, then, from that standpoint, are actually greater in your garage operation than they were when you were an independent businessman?

A Yes.

Q Isn't that fairly correct?

A Yes. Well, we try to buy at jobber price all the time.

Q Yes. But the amount of money that you spend --

A Yes.

Q (Continuing) -- is that more than you would spend you were a sole proprietor? Isn't that correct, or is it? I don't know.

A No. I spent quite a bit of money there, too.

Q All right.

A I run through twenty thousand gallons of gas, and that costs you a lot of money.

Q Aside from your gas, I am talking about taking the gas out and talking about repairs and service station work?

A Yes. I done a lot more down there.

Q Down where?

A Down at the garage.

937

Q Actually your responsibility down there, yours and Mr. Kleinknight's, is running what would be a substantial dealership operation, so far as the service work is concerned?

A Yes.

Q Is that correct?

A Right.

Q And you two serve the function jointly of purchasing, the parts manager?

A Yes.

Q The service manager?

A Yes.

Q Plus the mechanical work?

A Right.

Q And you are responsible for security?

A Yes.

Q Is your position one of where the Liberty Coach Company is -- has put substantial trust --

A Right.

Q (Continuing) -- in you and Mr. Kleinknight?

A Right.

Q Have you felt that all along?

A Yes. We had one man down there that got kind of "long fingers." We let him go on that

account.

938 Q Yes. But what I meant is, that you have felt that you have a responsibility to that company over substantial property?

A Yes.

Q And a substantial responsibility, is that correct?

A Yes.

Q Would you say that that's different from the men in the shop out here?

A Yes.

Q Why would it be different?

A Well, I don't think that they -- they have any right to order anything, or anything like that, to handle all that stuff.

Q What about control of things?

They don't control the equipment, the tools or anything of that nature, do they?

A No.

Q Are you and Mr. Kleinknight in control of the physical properties down there?

A Yes.

Q Are they your responsibilities?

A Yes.

Q To guard?

A Yes.

Q To keep safe?

933 A Right.

Q To secure?

A Yes.

Q Do you actually feel that?

A Yes.

\* \* \*

941 Q How about Goshen Auto & Brake Service?

A They stop there every week.

Q And you spend time talking to them?

A Yes.

Q Discussing what you need?

A Yes.

Q And what their prices are?

945 A Yes.

Q Making your decisions?

A Yes.

Q And when you make that decision, it is just --  
you have spent the money, haven't you?

A Yes.

Q You didn't get anybody's authority for spending  
that money, did you?

A No.

Q And nobody comes down and questions you the day after you have spent it, do they?

A No.

Q They don't question you? Essentially, you haven't been questioned about money you have been spending down there?

A No.

Q Isn't that correct?

A No, not at all.

Q So you fellows have spent the money just like you are running your own operation, is that correct?

A Correct, yes.

\* \* \*

950 Q How about Noble Motor Parts?

A We used to buy off of them, but they don't stop no more. We had a few bad lucks with some of their parts, so we didn't buy any more from them.

Q Who made that decision?

A Well, I did, I guess.

\* \* \*

982

DONALD P. DECK ,

having been first duly sworn, was examined and testified as follows:

E X A M I N A T I O N

BY MR. JAMES SHEA:

\* \* \*

981

Q Do you go through and review the garage invoices from the standpoint of trying to determine whether parts were necessary, this or that?

A I couldn't make judgments in those areas as to whether a certain part was required or not.

Q I'm not asking you whether you can make the judgment. Do you attempt to make that judgment?

A No, sir, I do not.

Q What's your primary concern with respect to the records that you review from the garage operation? -

A We are primarily -- I am primarily concerned with those two things, that the garage operator's name is on there as having received and approved the invoice, and when I have -- when I do see his name on there, I then pass them for payment, or if they have already been paid, I will put

them in the order for filing.

Q Which is essentially more or less of a clerical review, to see whether --

985 A I think it pretty much constitutes a financial, clerical review.

Q In other words, the signature you are looking for is an authorization signature, is that correct?

A That is correct. If I see either one of our garage operators' signatures on there, then this is satisfactory evidence to me that they have approved this item, and I am willing to pass it at that point.

Q Why is that? Because they have the authority?

A They do have the authority, that is correct.

\* \* \*

988 Q All you are trying to do at that time in your review is make sure that there was authorization from the parties in authority?

A I am concerned that whenever our two garage operators' names appear on the invoice, as having received the parts and having approved the invoices for payment.

Q Because it is Accounting's prerogative to require

authorization for --

A Well, as I testified, before, I consider these men to be our agents, purchasing agents, and I would certainly like to have their approval on those invoices.

Q I see. Are they, in fact, the purchasing agents for the garage operation?

A In this area, they are, in buying parts; they are our purchasing agents.

\* \* \*

973 Q What I want is from an actual operation standpoint, as far as making decisions, what to do, hours to spend on this, hours spent on that, who manages Liberty Garage operations?

A The garage operators make decisions in all those areas.

Q Are they -- do they manage the garage, is actually the question?

A Yes. Yes.

\* \* \*

977

H A R O L D E . W E A V E R ,

having been first duly sworn, was examined  
and testified as follows:

E X A M I N A T I O NBY MR. JAMES SHEA:

\* \* \*

Q Would you briefly state your position at Liberty Coach Company?

A I'm Vice-President of the Company in charge of Production and Design.

\* \* \*

978 Q Now, were you at Liberty Coach Company back in 1961, I believe, when the -- there was an original drive by the United Auto Workers?

A Yes, I was.

Q Were you familiar with the policy of the management with respect to the treatment of their people, employees, so far as Union endeavors were concerned at that time?

A Yes, I was.

Q Are you likewise familiar with the company's activities and their attitude toward Union activities in the election that was run recently?

A Yes.

Q Was there any difference insofar as the activity or activities of the employees or its agents or the management -- I shouldn't

say "the employees" -- the employer, the management personnel or the policies of the company in this recent election, as opposed to the one in 1961?

A No. They were very similar.

Q The company's attitude?

A The attitude was very similar.

Q And what was that attitude?

A Very open attitude. We asked our supervisory help to make no comments against the Union or to say nothing, and to let the employees have a free hand in the discussion as they wanted to.

In other words, no discussion of our time with them.

\* \* \*

979 Q Could you elaborate on that so far as -- is there -- I will put it this way:

Is there -- are these men free to talk to you out in the plant?

A Yes, they are, and they often do, and I think we have a very cooperative feeling among our employees and the people in the management end here.

Q Do they joke with you as you go out there and

982

kid with you?

A They certainly do; quite a few of them.

\* \* \*

984

Q To your knowledge, has Union literature been passed out freely around the plant on a day-to-day basis?

A Oh, yes. I've seen the literature myself, and some of the employees were open about it and said they had received literature.

Q Isn't it a fact that Union, or was it a fact, that Union literature was lying around on the floors and things of that nature, and nobody complained about it?

A Oh, that is correct, yes. I've seen some of the literature myself out in the plant, lying around and not any mention of it made other than some laughed about it and joked about it, and others, I suppose, read it, but I don't know.

\* \* \*

985

Q Had you ever seen one man giving a piece of Union literature to another man in the plant?

A Yes. I would say several times I saw them reading together or passing literature around to one another.

Q Did you object?

A Oh, absolutely not.

Q Did you even -- did you indicate any special observation of that fact?

A No, I did not.

Q In other words, it was just while you were casually going about your business in the plant?

A That is correct.

Q And the men didn't act secretive about it, or did they?

A No; very openly. In fact, some of them jokingly brought it over and said, "Do you want a piece, too?"

Q And had any effort been made to prevent Union activity in the plant, solicitation, or anything of that nature, during working hours?

A To prevent it?

Q Yes.

A Absolutely not.

Q Even during working hours?

A That is correct.

Q Had any warnings gone out to any employees or rules been laid down that they shouldn't

campaign or talk about Union during working hours?

A Not to my knowledge.

\*\*\*

987 Q Now, with respect to the Liberty Garage, have you ever met the garage operators at Liberty Garage Company?

A No, I haven't.

Q Never in your years with the company, is that correct?

A That is correct. I don't even know who they are, to tell you the truth.

Q If they walked in here, would you recognize them?

A No, I would not.

Q Does the garage operation have -- do you have anything to do with the garage operation?

988 A None whatsoever in my capacity, no.

Q Does anybody under you --

A . No.

Q (Continuing) -- under your supervision, have anything to do with the garage operation?

A No; none at all.

Q Does anybody in manufacturing have anything to

do with the garage operation?

A No.

\*\*\*

997

R O N A L D H E F F N E R ,

having been first duly sworn, was examined

and testified as follows:

E X A M I N A T I O N

BY MR. JAMES SHEA:

\*\*\*

Q And you are an employee of the Liberty Coach Company?

A Yes, I am.

\*\*\*

1001 Q In connection with that literature you received, did you receive a copy of that letter that a Mr. Ted Nolan addressed to the President of Liberty Coach, Mr. Hussey?

A Yes, I did.

Q And was that the letter concerning Mr. Ted Auer?

A Yes, it was.

Q Did you receive a copy of the bulletin put out by the organizing committee that talked about Ted Auer and accusations that he had made and threats and things of that nature?

A . Yes, on this yellow sheet of paper.

Q I don't know.

A I believe it was.

1002 Q And did you talk to Mr. Ted Auer after receiving that?

A Yes, I did.

Q Where did that -- how did that take place?

A Well, I called him. I wanted to assure him that I didn't have anything to do with that particular incident.

Q Where did you call from?

A From my home.

Q Is that a long distance call?

A Yes.

Q Why did you want to assure him of that?

A Well, I just seen this propaganda sheet that they had out, a lot of things that he said, and my name was at the bottom of it.

Q A lot of things that he said? Who said?

A Oh, that the paper --

Q Said?

A Referring to him as saying, and I didn't actually hear those things.

Q Did you believe them?

A No, I didn't.

Q Why?

A Well, I have never heard them from anybody else.

Q What about Ted Auer? Has he ever been that type of person?

A No. No.

Q How long have you known Mr. Auer?

A Oh, gee. You see, I worked for him, oh, back in '42 'til, oh, I'd say the last ten, twelve, fourteen years, I suppose.

Q Mr. Heffner, you didn't authorize your name to appear on those statements?

A No. No, I didn't. I know I attended the first meeting that they had down there --

\* \* \*

Q I don't care why you attended the meeting, or what.

Let me ask you this:

Were these things that were said in that letter discussed with you?

A No.

Q Did you know that was going to come out?

A No, I didn't. Not until I got the letter.

Q Did you sign up for the organizing committee?

1003

A Well, --

Q I don't care about this.

1001 A See, I attended this first meeting that I had due to one of my commuters, riding back and forth with.

Q What I am primarily interested in is this, Ron:

I don't care anything about that. Mr. Auer thought you had told him that you didn't authorize them to use your name as part of the organizing committee?

A Yes. They just had a piece of notebook paper they passed around and wanted the guys to sign their names to, and I happened to sign this paper. There was nothing on it, but I didn't --  
I guess I didn't catch that, that it was an organizing committee, because I didn't know anything about it until this letter came out, that I was on the committee.

Q They didn't tell you that you were -- no; if they told you --

A I might have missed it. I don't know. I didn't, not to my knowledge, I didn't know I was on the organizing committee.

Q All right.

A I know they talked about organizing an organizing committee that first meeting.

1000 Q That doesn't matter, Ron. The thing -- the only thing that I was interested in is, and only then because you called Mr. Auer up.

A Yes.

Q Mr. Auer stated that you told him that you didn't have anything to do with that, and it was wrong for your name to be on there?

A Yes.

Q He interpreted it that way.

A I was kind of sore about that.

Q Did you talk to anybody about it?

A No.

Q Other than Ted?

A No; just Ted.

Q But did you know -- I will put it this way:

Did you know you were on the organizing committee?

A No, I didn't. I didn't really know that because that's the only meeting I attended.

1000 Q But when -- your name came on that -- they asked for the -- what happened on this piece of paper that was passed out?

A Oh, they just passed a piece of paper around for the names of the guys that was there, and they signed a notebook paper. That's all it was.

Q Did you know that this -- signing this thing had something to do with the organizing committee?

A No, I really didn't.

\*\*\*

GERALD BAKER,

having been first duly sworn, was examined and testified as follows:

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1014  
1016 Q And did you get the bulletin that -- I don't know whether it was the yellow paper or what it was, but the one that was mostly about Ted Auer and his threats?

A Yes.

\*\*\*

Q Well, did you talk to Ted Auer in connection with that bulletin?

A I did.

\*\*\*

Q Did you tell him that they -- I thought that you came and told him that they had no authority to use your name in connection with it?

1018 A I was -- I tell you, when this thing first came up, I went to the first meeting they had, the Union; I was there, but -- well, in fact, I had to be in the Bank in North Webster -- I live at North Webster -- at four o'clock, and we get off at three-thirty, and I wasn't there five minutes, and I didn't even sign my name, as far as that goes, to the --

Q Do you mean as one of the organizing committee?

A Yes.

\*\*\*

1021 Q Had anybody talked to you about these accusations?

A No. I didn't even know they were doing it.

Q You didn't know who was doing it?

A Well, whoever done it.

Q Do you mean --

A I mean, whoever made the letter up. I say, I didn't even know it was being done, as far as that goes.

Q You must have known, if you talked --

A I mean, I didn't know until it was done and in the mail.

Q In the mail and that's --

A Then I was told there was a letter on the way.

Q And that's when you talked to Ted?

1025 A Yes. I mean, hell, I had known Ted for, Christ, all my life, and I didn't want him sore at me, naturally, for any reason of this kind.

Q Well, did you think that Ted Auer said those things?

A What? Do I?

Q Yes.

A Well, not to my knowledge, he never said them to me.

Q Has there been anything in his activity in the company history that would indicate that he would do anything like that?

A Not as far as I know.

\*\*\*

1026 Q They didn't even -- was the company's position, you know, stated to anybody by any management people?

A No. I never heard the company say anything until the vote was over, and then it came out a tie. I mean, so far as I knew, there was never anything done about it.

\*\*\*

1032

C H A R L E S ( G E N E ) E . H I L L ,

having been first duly sworn, was examined and testified  
as follows:

\* \* \*

1033

Q Yes. In connection with the recent election,  
and before the election, primarily, did anybody  
from the company, any management personnel,  
any working foremen, Plant Superintendent, try  
to, you know, influence you one way or the  
other on how you would vote?

1034

A No; absolutely no.

Q Did they even discuss it, Union or no Union,  
with you?

A Do you mean the foremen or one of the superintendents?

Q Yes.

A No.

\* \* \*

1035

Q Well, is Mr. Hussey -- is he -- you know, I  
don't know if you have ever worked places where  
men will stand up and make a lot of promises  
of money, and this and that, you know, and  
then it doesn't come true, but that's part  
of their technique or something.

Has Mr. Hussey ever made any promise or

anything of that nature, even not in connection with the election, where what he said hasn't happened?

A Not to me, he hasn't, no.

Q To any of the men?

A I don't know about that. I wouldn't know.

Q Well, let's say occasionally, he's come out and talked to the men.

A Oh, yes. He comes out and talks.

Q And when he talks to the group, if he states anything, is that the way it comes out?

A Well, I have always found him that he is pretty good with his word, yes; good with his word.

Q All right.

A If he promises something, like our bonus, he lived up to it, but the men goofed it themselves; I will tell you that, if you want to know that.

Q Why do you say that, Gene?

A Because they slow it down. They would hold the line up so we wouldn't make so much bonus. The men would do it; not the foremen, nor Ted, but the men would do it themselves.

Q When was that? During the summer?

A Right after vacation. I got this all wrote in a book at home of what I made for the last five years, and after vacation the first week in July, we was making \$170 to \$195 a week before vacation, and when we come back, they "bulled" the line.

Q What did you say? They did what?

A "Bulled" it. Slowed her down.

Q B-u-l-l-e-d? Bulled it?

A Yes. Bulled it, slowed her down.

Q Where was that happening, Gene?

A Well, most of it started right here on doors and windows and on tops and some on metal and -- well, clear on down. You see, I work up here (indicating).

Q Yes.

104- A On the finishing end and we can't hold the line, because they will take us right on down.

Q Yes. But you have been with this company how many years?

A Almost nine.

Q And you could tell that this was happening?

A I guess I could. I can tell by my pay-checks what is happening.

Q I know, but then did you make --

A With my own eyes, yes, I could see it happening.

Q Well, then, the accusations -- let me ask you this:

Was there any cheating done on the part of the company, do you think?

A Not that I know of.

Q Well, do you have any feeling that there was?

A Not to me there wasn't, no.

Q But you did have a feeling that what was happening was the line was being bulled?

A I know it was. I can take you out there to several of the men, if you would want to meet them, of course, and we don't do it out there, but we know that they slowed it down, just tried to get the Union in or something. I don't know what.

\*\*\*

1047

A R T H U R L E A ,

called as a witness, having been first duly sworn,  
was examined and testified as follows:

\*\*\*

1048 Q Let me ask you this:

Prior to the election, at all times prior

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to the election, were there any threats by anybody in the company, that you know of, personally or that you heard, any company man or management personnel or your Working Foreman made to anybody that if the Union got in the Christmas Bonus would be cut off or benefits would be lost?

A No. No. I never heard anything like that. I have heard the rumors, but nobody from management has ever said anything like that.

Q When you say you heard the rumors, where did they come from?

A You hear them all over out there.

Q Are you speaking now of Union literature?

A Some of it, yes, and some of the guys talk out there. As we said, it comes from the rest-room.

Q Was there any effort made on the part, to your knowledge, on the part of the management or anything to cut off any discussion of unionism between the men?

A Not that I know of.

Q Was there any attempt to spy on the men if they were talking?

A Not that I know of.

1050 Q From your observation, did the men freely make comments to one another about the Union?

A As far as I can see they did, talked amongst themselves.

\*\*\*

1057 Q I never heard this expression "bulling" the line until this morning. The man that you worked with, Gene Hill, mentioned that.

A Yes.

Q What does that mean, Art?

1058 Do you know?

A Well, that's probably his term for some of these people out here that did hold up the line. This is a well-known fact.

Q What do you mean "it is a well-known fact"?

Do you mean around out there, among the people?

A Yes. Yes. I don't know how well management knows it, but people out there, it is pretty much a thought that that was what was a-happening in two or three departments out there.

Q What departments would those be?

A Well, the ---

Q I'm not asking this for any ---

A Yes.

Q I will tell you frankly, for any purpose to discover names, this and that, because we don't care.

A I wouldn't tell you the names, because there's people out there that's new here that I don't even know their names, as far as that's concerned, but the people that installed the windows and doors I know was holding back the line, goofing off, in plain English.

Q When did they start that? Do you know?

1059 A Oh, ever since they decided they wanted a Union in here.

Q Well, when?

A All summer, I'd say.

Q Do you mean there were people out there -- here's a situation that, like you say, I've never known before now that there was Union activity out there, and I really don't care, and the company doesn't care in December, but was there Union activity out there in December, to your knowledge?

A Oh, how far back it goes, I don't know. Prior to this election it was talked up for a month

or so, a couple of months.

Q Amongst some of the people?

A Pardon.

Q Amongst some people out there?

A Yes. Some of these people out there were talking Union. How far back I wouldn't venture to say; a couple of months, probably, before the election period.

\*\*\*

1081

Q Have you ever seen anything or heard anything where -- of a factual nature where cheating on bonus or doing this or that with bonuses is concerned?

A No. I don't think they have ever done it. The thing that -- I have heard these stories, too.

The thing that has happened here all summer, they have had a great turn-over of labor, and they've got a lot of new people out here and a lot of them didn't stay long. They went some place else. A lot of older people quit and went some place else, and they have hired a lot of new people. This bonus situation is set up for so many jobs for so many people for so many hours, and when you

hire more people beyond this, which is what happened this summer, there was more people working here now than ever worked here before, the base goes up in proportion.

When you have this great turn-over, when there's eighteen guys quitting every week and you are hiring new ones and you are replacing this one and you are just plain acquiring new people altogether, this thing fluctuates back and forth.

Consequently, when it is figured up down on the end of the line on Friday night or Saturday night, whichever it happens to be, maybe Mr. Bechtold upstairs doesn't always come up with the same answer that they thought they had down there, but it is all based on the amount of men that was here at this particular time.

Q All right.

A If they hired some new people during the week or the week previous that are added, it makes a change in it. These people out here can't figure it, because they don't know how.

Q Do you mean some of them? Some of them can,

1062

though, can't they?

A Some of them can. They are not all that -- that can't figure it, but there's some of them that can figure it, but to figure it right down to the percentages that they come up with at the end of the week, you have to know just how many people is on bonus, how many jobs they have put out during the week, and how many hours that they have worked.

\*\*\*

1066

E L D E N   S U T T E R ,

having been first duly sworn, was examined and testified as follows:

\*\*\*

1069

Q Did you ever receive any literature from the company on the Union?

A No, sir.

Q Did anybody ever make any speeches out there from management?

A No, sir. No, sir.

Q The company didn't even try to state its position, did they?

A No.

O Did any men wear Union buttons out around the shop?

A I didn't see no Union buttons over at the other building at all.

Q Did you see any at any building?

A I did here, a couple.

Q Here on the main production line?

A Yes.

Q Nobody, to your knowledge, told the men to take their Union buttons off?

A Not that I know of, no.

Q There were charges made against Mr. Ted Auer in this Union literature?

1070

A Yes.

Q That he had threatened to cut off Christmas Bonuses and threatened to cut off this benefit and that benefit, and the plant would close down.

Did anybody from management, to your knowledge, ever make any such threats?

A Not that I know of, no, sir.

\* \* \*

1072 Q

Have you ever heard that there was a slow-down going on around on the production line in the summer?

Have you ever heard rumors of anything of that nature?

A I thought there was this spring and this summer.

Q Why did you think that?

A Well, the fellows thought that they ought to have a higher bonus rate. They thought that Mr. Hussey would raise their bonus rate if he'd get -- if they had to have the trailers in order to get the trailers they would raise the bonus rate. That was just the talk in the car with the fellows in the car on the way home that I ride with. That's all I know.

Q Do you know whether anybody communicated this to the company?

A No. I don't know anything about it.

Q Did the company ever ask about anything of that nature?

A No. They never asked that I know of.

Q All right.

A Then this fall we -- the bonus rate went up when the business got busy and started working.

Q Is that, in your opinion, from your observation, working around here, the reason that the bonus rate went up there, say, whenever it was, say

A I didn't see no Union buttons over at the other building at all.

Q Did you see any at any building?

A I did here, a couple.

Q Here on the main production line?

A Yes.

Q Nobody, to your knowledge, told the men to take their Union buttons off?

A Not that I know of, no.

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Did anybody from management, to your knowledge, ever make any such threats?

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\* \* \*

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Q Why did you think that?

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Q Do you know whether anybody communicated this to the company?

A No. I don't know anything about it.

Q Did the company ever ask about anything of that nature?

A No. They never asked that I know of.

Q All right.

A Then this fall we -- the bonus rate went up when the business got busy and started working.

Q Is that, in your opinion, from your observation, working around here, the reason that the bonus rate went up there, say, whenever it was, say

in October, is because the boys started working again?

A That's right.

Q Is that the feeling that's out in the plant now on a lot of people's part?

A Yes. That's the attitude that the fellows got over at the other building. We had the stuff made up and it just seemed like they couldn't use it over here. They just didn't want to ---

Q Now, you have been over -- isn't it hard for management to pinpoint a slow-down because a man comes through like Ted Auer and when he comes through the people can work and as soon as he goes, they can quit, isn't that correct?

A That's right.

\*\*\*

1073

H A R O L D G E I G E R ,

having been first duly sworn, was examined and testified as follows:

\*\*\*

1083 Q And let me ask you this:

Was there any influence that you know of on the part of the company, prior to the election?

A No.

Q Out there that you observed, saw, heard?

A No; nothing.

Q How about after the election?

A No. It's been quiet.

Q Now, do you feel the company cheated you on bonus?

A No, sir.

Q Why not?

A I'm very happy.

Q Well, I know, but let's see.

A For the reason they didn't cheat us. The orders were here and if the boys had wanted to produce, we could have made as much as we made a year ago.

\*\*\*

1087 Q Did you hear or know of any rumors that there was a slow-down out in the production line this summer?

A They always say -- they said they were working hard. We said they weren't, and they said we weren't, and you know, how that goes; back and forth.

Q Yes, but you never heard that there was any ---

A Soldiering.

Q What do you call it?

A Soldiering.

Q I don't mean "goldbricking."

A Goldbricking.

Q That can go on all the time. There are some men that are better workers than others, and there are some that are not feeling good that day or this or that, but I'm talking about an effort to slow production down, to cut the bonus down on the part of certain people.

I don't care who they are, but have you ever heard of anything of that nature?

A There was talk that they said when they made so many that was enough for the day.

\*\*\*

1088

G E R O L D   B A K E R ,

recalled as a witness, having been first duly sworn, was examined and testified further as follows:

\*\*\*

1091 Q The Union literature -- you came and talked to Ted Auer?

A Before the letter ever come out I talked to him about it, because I had been told that there was one coming out about it.

Q And you told him ---

A I told him if I got it, if I got one of them --

1092

I didn't know whether I was going to get one or not -- but I figured, since my name was on the committee, I would get one, and I told him if I got one, why, I'd let him see it.

Q Did you tell him that that was against him and said all kinds of things about him?

A No, I didn't know about it. I never seen one. I didn't even know what it was, the letter. I mean, I hadn't seen one of them before I got it.

Q No, but you knew what was in it, didn't you?

A No; not for sure. No. I just heard.

All the guy told me when the letter was coming out, was they was getting a nasty letter, and that's all he said..

Q About Ted Auer?

A Yes.

Q You did know it was a nasty letter about Ted Auer?

A He said it involved him a lot.

Q And that's when you went to Ted Auer?

A Because I knew my name was on it.

Q And you wanted to let him know you didn't have anything to do with it?

1093

A That's right. That's right. I have known Ted Auer all my life, probably, and I didn't want him sore at me over something like that.

Q You told him ---

A I told him if I got a letter I would bring it in and let him see it.

Q He didn't ask you for it?

A No, he didn't ask for the letter.

Q He never asked you to come in and report any Union activity to him?

A No. I done that voluntarily, bringing him the letter. I mean, myself. He didn't ever ask for it.

Q Was that because you were embarrassed about it?

A Just because if it was as bad as this guy made it sound, I didn't want nothing to do with it, really. I mean, it don't mean that much to me, sure as hell.

\* \* \*

1103

C H A R L E S W. L A N T Z ,

having been first duly sworn, was examined and testified as follows:

\* \* \*

1114 Q Well, there was talk that -- at least in  
that Union literature, I believe, some place  
1115 they said that the company had been rigging  
the bonus, and was -- well, I will ask you  
this:

I think I've asked you this. Did the  
company in any way rig the bonus, to your  
knowledge?

A No. Not that I could see of.

Q All right. Now, during the summer, was there  
any production slow-down that you know of or,  
in your opinion, by any of the people out in  
the -- I don't want the names; I just want  
to know whether, in your opinion, working  
out there, there was any production slow-  
down that would have caused a lesser bonus  
during say July and August?

A Well, the only thing I could say of would be  
on the part of some of the men.

Q Well, that's what I meant.

A Yes.

Q Nothing with respect to the company?

A No.

Q Did you feel there was a slow-down on the

part of some of the men?

A Well, in some ways I will say yes.

Q Why do you say that?

1116 A Because I feel as if they could have got a little bigger bonus than what they did.

Q If they had done what?

A If they had buckled down and worked.

\* \* \*

1124 L A V E R N   B E C H E R ,

having been first duly sworn, was examined and testified as follows:

E X A M I N A T I O N

BY MR. JAMES SHEA:

\* \* \*

1130 Q In your opinion, and from your observations, was this a free election as far as the company was concerned, without interference from the company?

A Personally, as far as I know, I didn't hear nothing on the company side at all.

Q Probably you wished you had?

A Well, really.

Q Well, that's all right.

Now, had you heard anything about the company cheating on bonuses, production bonus?

A I heard something about it, but it was just hearsay. I mean, they wasn't in a position to know, period.

Q Was that after this Union, piece of Union literature came out?

A I couldn't say whether it was before or after.

Q Was it right around that time?

1131 A Yes.

Q Do you feel that the company was, I mean I want to honestly know -- do you feel the company was cheating in any way or rigging the production of bonus?

A No. I keep count down there myself.

Q Where is that at?

A Final finish.

Q In final finish?

A I put the MHMA tags. That's on the trailer. That's to correspond with the trailer number.

Q Did you keep count of the number of coaches?

A Yes.

Q So far as the number of coaches, was there any indication to you that the company was trying to rig the bonus by running any type of coach through there that would produce more bonus, if that's possible?

A No.

Q Would you say, in your opinion, that didn't happen?

A I don't think it happened.

Q Was there any -- speaking about this summer, and I don't want names in this regard at all, but of course the company, as you know, has been -- when that Union literature has been accusing of rigging the bonus and cheating the men, and I think that literature drew attention to the difference between the bonus after the election notice, or after the election was called and before it -- notice of an election was received.

Prior to that time that the notice was received that there would be an election or that there was a petition filed for an election, was there anything going on, in your opinion, on the production line that

would have affected bonus?

A No.

Q No slow-downs, in your opinion?

A (Nodding) Before the election?

Q Well, not right before the election; let's take last summer.

Was there any -- I don't want any names, this or that; I just want to know whether or not, in your opinion, the guys, every man there was trying to get out the most he could or whether there might have been some people who were actually trying to keep the bonus down for reasons of their own?

1133 A Well, I don't know if this was trying to keep the bonus down for reasons of their own, but you always have somebody dragging their feet.

Q Well, in your opinion, was there any more of that going on in the summer than normal?

A That's a hard question. I would say there was more than there was last year.

Q More than there was last summer?

A Let's put it that way. The bonus proves that.

Q In your opinion?

A Yes.

Q In other words, in your opinion, the reason that the bonus was less this summer than say later on, say, in October, was because people were dragging their feet?

A Yes. That's what I would say.

Q Than in the summer?

A I believe so.

Q Do you believe this? I don't want to put words in your mouth.

A No, you are not.

Q That's pretty well-known out there, apparently, in the plant today, is that correct?

A I would say so.

1134 Q So actually ---

A I would say that this summer we could have made just as much as last summer if everybody had worked.

Q For some reason they weren't working, is that right?

A That's right. In the middle of the summer. I don't know why it was that they weren't, myself, personally.

1139

G E O R G E . R . A U E R , J R . ,

having been first duly sworn, was examined and testified as follows:

E X A M I N A T I O N

BY MR. JAMES SHEA:

\*\*\*

1157

Q Did you ever hear anything so far as Mr. Auer or anybody else stating that the Christmas bonuses were going to be cut out?

A No, I never did.

Q Other than what was printed in the literature?

A No, I never heard that.

Q How about closing the plant down?

A Oh, I never heard from -- that from Ted or any of our foremen.

Q Who did you hear that from?

A Just I'd say talk, some of the men from what I'd say.

Q Jerry Platcher?

A I wouldn't say Jerry. I wouldn't say who. I have just heard the say-so from there and I don't know from Ted or them, because they never had said anything like that to me or

1158

anybody else that I know of.

\* \* \*

1161 Q Was there any discussion to you, in any way, shape or form, that the company was cheating on the bonus?

A Well, there was rumors of it, but they couldn't cheat because we -- every trailer I run, we notice it, because we kept track of them up there ourselves and we figured it out ourselves and we come out right on the nose.

\* \* \*

3 RICHARD JOSEPH BUSHONG,  
having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. JAMES SHEA

Q

\* \* \*

4 Did Ted Auer ever make a threat to you personally that he would close the plant if the Union won the election?

A No.

Q Your answer is "No"?

A Yes.

Q Were you ever present when Ted Auer made any such threat to anybody?

A No.

Q Do you know of anybody else who was present when  
5 such a threat was made?

A No.

Q You have never heard any hearsay in that  
connection?

A I have heard hearsay, just around.

Q Other than what was said here in the bulletin,  
though, and the letter? That's your information?

A I just heard -- you just pick it up that somebody  
says that you don't have any Christmas party  
any more, and things like that, that's all I  
heard.

Q Have you ever heard them say anything with respect  
to Ted Auer?

A No.

Q Did you tell Mr. Ted Nolan that Mr. Ted Auer had  
said the things said in this Bulletin?

A I told him that I had heard rumors around like  
that, but nobody ever said that he said it  
directly to him.

Q And did you write this News Bulletin?

A That one you just read?

Q Yes.

A No.

Q What was the occasion of your talking to Ted Nolan? Was he asking you for information of this nature for a news bulletin?

A No: They had more or less a Union meeting or whatever you want to call it, right before. I think it was about two weeks or ten days before the election.

Q Well, Mr. Pletcher told us you told Nolan these things. Did you tell him these things?

A . I told him I heard hearsay of stuff like that.

Q Did he question you to make sure of the source of your information and that it was absolutely true or anything?

A No.

Q Do you know of anybody else that told these things to Ted Nolan?

A No.

Q Has Ted Nolan ever talked to you about closing the plant -- did Ted Nolan make any threats to you in connection with the Union election in any nature?

A No.

MR. JOHN SHEA: You mean Ted Nolan

or Ted Auer?

MR. JAMES SHEA:

Q Ted Auer, I mean.

A No, Ted never said anything to me at all about it.

\* \* \*

12 Q Did you tell Ted Nolan that there was a threat to take away the Christmas bonus?

A No.

Q You didn't tell him?

A No.

Q Did you tell him you heard rumors of that?

A Yes.

Q Who did you tell him you heard the rumors from?

A I don't know. I just picked them up. I don't even know who they were from. Everybody was just saying that.

Q Can you tell me where they came from? Name one person that told you.

A I don't remember it at all.

Q How about closing the plant down, anybody that --

A No. That was just -- you know, somebody would walk by and say that, and you wouldn't pay any attention to it.

Q It wouldn't be from management, though, would it?

Your working foreman, did he ever tell you anything of that nature?

A No, he didn't tell me anything.

Q Did anybody from the office tell you anything of that nature?

A No.

13 Q Did you hear anybody from the office say anything of that nature?

A No.

\*\*\*

21

JAMES W. SCOTT,

having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. JAMES SHEA

\*\*\*

Q Jim, do you recall the News Bulletin of October 21, 1966, which was the one that concerned Ted Auer, that he doesn't play the game right and that his actions and remarks are disgraceful and illegal, and we hope Mr. Hussey will straighten him out?

22 A We all got a copy of that.

Q You got a copy of the letter that was enclosed with that bulletin?

A That's right.

Q Did they come in the mail?

A Yes.

Q They came in the mail to you, is that correct?

A That's right.

\*\*\*

24 Q Have you ever known of Ted Auer -- any incident,  
not this particular one, but any incident of this  
type, of any nature, that Ted Auer has done that  
25 would lead you to the believability of the fact  
that he would do these things that he is accused  
of in this bulletin?

A I can't think of any offhand, but...

Q Okay. Now, let me ask you this question: Do you  
know whether you called him over and told him  
that you don't believe in playing dirty like this  
and you don't know anything about it?

A I absolutely didn't know anything about the  
letter, no, I didn't until I got it in the mail

\*\*\*

47 Q Did you ever tell anybody the company was cheating  
on bonus?

A No. I had had a lot of people tell me that.

\*\*\*

2

J E R R Y   L E E   P L E T C H E R ,

having been first duly sworn, was examined and  
testified as follows:

E X A M I N A T I O NBY MR. JAMES SHEA:

\* \* \*

18 Q Well, actually, if you could sign cards --  
get cards signed on the job, did you do it  
19 openly or did you do it secretly?

A I did it openly.

Q You did it openly?

A Yes.

Q And you talked to people openly about the  
Union on the job?

A Yes.

Q And you wore a Union button?

A . Yes.

Q Other men wore Union buttons, didn't they?

A Yes.

Q And the company didn't do anything in that  
connection at all, did they?

A No.

\* \* \*

31 Q Oh, but the things that came out in that letter  
32 regarding Ted Auer, none of them you had --  
you had personal knowledge of none of them,  
is that correct?

A Right.

Q Did you ever tell anybody you had personal knowledge of anything of that nature?

A I got the letter saying everybody got it.

Q In other words, you knew nothing about the letter beforehand?

A I knew this was the letter going to Mr. Hussey, but I didn't know any more about it.

Q That letter was prepared as a Union letter, is that correct?

A Yes.

Q And also the bulletin that came out saying the same things, was that -- this was a Union letter?

A Yes.

Q Who prepared the letter?

A Ted Nolan.

Q Ted Nolan. Who prepared the bulletin?

A Ted Nolan.

Q So the men whose names appear on the bottom, of that committee, did not prepare or write that bulletin, is that correct?

A Right.

\*\*\*

44. Q Did you talk or I mean, so far as the garage

45

mechanics over there, did you talk to them in connection with the Union?

I don't care whether -- I mean, prior to the election day?

A Yes.

Q How long before?

A About a week before; a week or so before.

Q All right. On election day, did you go over to get them?

A No. On election day they wanted to -- Jim phoned them from here.

Q Jim Scott?

A They asked Mr. Bechtold and all of them that was there if they could call him before the election.

Q Yes.

A And tell them.

Q He asked the National Labor Relations people?

A Yes.

Q I see. What happened then?

A Because they wanted to know -- they asked Jim if -- earlier if they could vote or not, and he asked the Labor Board guy if they could vote, and he asked the Union and Mr. Bechtold

46

was there, and they was all talking and discussing the two guys in the election, and the Labor Board man said they can vote, but their votes would be challenged.

Q Well, you knew that their names hadn't been included in the eligibility list that had been sent out by the company and a copy to the Union, isn't that correct?

A Right.

Q You knew that prior to the day of the election, isn't that right?

A No, I didn't because I didn't -- I didn't look over the eligibility list. I didn't know whose all names was on there.

Q But you had the -- you talked to these people before, a week beforehand?

A Yes. And they wanted to know if they could vote and I said, well ---

Q That was a week beforehand?

A Yes.

Q When you talked to them and you said -- you said what?

A I said if that -- if their names is on the eligibility list, there's no reason why you

47

can't and they asked Jim, and I guess he looked over the eligibility list and he said he didn't know; he would ask the Union man.

Q So he asked the Union man?

A Yes.

Q So the Union man knew then approximately a week -- that's Mr. Nolan, right?

A Yes.

Q He knew, approximately a week before the election that their names were not on the list?

A Right.

Q That had been furnished by the company?

A Right.

Q Either of the lists?

A Right.

Q But that wasn't brought up then to anybody, was it?

A It was brought up at the election.

Q Right before the election?

A Pre-election meeting.

Q But not otherwise. That's the first time that it was brought up?

A Right.

Q In other words, the Union didn't tell the National Labor Relations Board, to your knowledge, that these men's names were omitted, is that correct?

A They did on the pre-election.

Q Yes. Right then.

A Yes.

Q But not then, the week before when they knew it?

A I don't know if Ted Nolan knew because we didn't talk -- the only time we talked to Ted about those two guys was the day of the election.

Q You didn't talk to him beforehand?

A No.

Q But you had the eligibility list and so did Jim Scott?

A Right. I don't think I've got one.

Q Well, you had one, though, at that time?

A Well, they had it at the meeting.

Q That day, but you had the list that was sent from the company? You went over that list? You had the list that the company sent, that

the company had of the names and addresses?

A They had the name-and-address list, but I didn't go over it.

Q But Mr. Nolan had it, didn't he?

49 A Yes.

Q And in the Union correspondence it said that you had Union cards signed by the men over there at the garage area?

A Right.

Q When were those obtained?

A The day before the election.

Q So you talked to them again the day before the election, right?

A Yes. Jim did. I didn't.

Q And you had your cards at that time?

A Yes. Then Jim said he would talk to the Union representative and ask him if they could vote or not.

Q Yes. But a week before that you had had a discussion, as you have testified to?

A They asked me if they could vote or not and I said, "I don't know."

Q What are their names?

A Rich Timmons and Max Kleinknight.

Q Was it just a week before the election that you had talked to them in any way, you or Mr. Scott?

50 A They wanted to know if -- I was out there, and they wanted to know if -- I took some cards out there and they wanted to know if they could vote or not.

Q What time did you go out there?

A I don't remember.

Q Well, they were there and they were working?

A They was there.

Q And they were working on company business, right?

A I guess. I guess they were getting ready to quit or something.

Q You talked to them at the garage, though?

A Yes. I think they was just quitting or something. They wasn't working.

Q But had they called you out or did you go out?

A No. I just went out to take some cards out and they asked me if they could vote, and I think that was before we even got the eligibility list.

Q I see. Do you mean the one that the company

sent in?

A Yes.

Q With the names and things like that on it?

51 A Yes. I said I didn't know. I said I didn't know who they was going to omit. I said they was going to try to omit the truck drivers, but I said, "I don't know if that -- if that effects you guys or not," which I said I didn't think it would. I said, "You can ---"

Q In other words, that was ---

A They could find out later.

Q Yes.

A As a matter of fact, I took the cards out there for the truck drivers, because I didn't know we was going to omit them at that time.

---

Exhibit "E" to Affidavit of  
E. W. Bechtold - December 8, 1966

**LIBERTY COACH COMPANY, INC.**  
**Schedule of Hours Worked By Garage Operators**  
**January 1, 1966 through November 10, 1966**

Equipment Number	Description	Hours Worked	Percentage of Total
<b>Driveaway Trucks:</b>			
578	Ford	135.5	
579	Ford	92.0	
580	Ford	157.5	
581	International	198.0	
582	Chevrolet	169.0	
583	International	247.5	
584	Ford	184.25	
585	Chevrolet	212.0	
586	"	175.5	
587	"	189.0	
589	"	256.0	
590	"	180.5	
591	"	195.0	
592	"	173.5	
593	"	87.5	
594	"	180.0	
595	"	203.5	
596	"	136.25	
597	"	123.5	
598	"	56.0	
599	"	57.25	
600	"	21.5	
601	"	20.0	
602	"	16.5	
603	"	18.5	
604	"	14.0	
Misc.		16.0	
		3515.75	79.30%
 <b><u>Sales-Service Vehicles:</u></b>			
1964	Chevrolet	28.0	
C-1	Ford	5.5	
		33.50	.76%

Model or Equipment Number	Description	Hours Worked	Percentage of Total
<u>Factory Vehicles:</u>			
350	Int'l. Tractor	8.0	
Model 20	Chevrolet Van	33.5	
C515	Ford Van	15.0	
1964 Model	Chevrolet Pick-Up	24.5	
C101	• Clark Fork Lift Truck	8.5	
C104	Clark Lift Truck	7.0	
C106	Clark Lift Truck	14.5	
C107	Clark Lift Truck	3.0	
--	Trash Wagon	11.5	
504	Int'l. Utility Tractor	<u>23.0</u>	
		148.5	3.35%
Management, Purchasing and Clerical		735.5	16.59%
		<u>4433.25</u>	<u>100.0%</u>

Exhibit "K" to Affidavit of  
E. W. Bechtold-December 8, 1966

LIBERTY COACH COMPANY, INC.

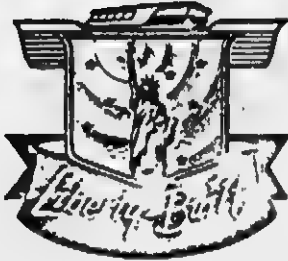
Schedule of Liberty Garage Invoices  
By Vendor  
For the Year 1966 through October 31, 1966

Auers Service Station 201 East Main Street Syracuse, Indiana 46567	\$ 449.08
Bowman Products Division Associated Spring Corp P.O. Box 6908 Cleveland, Ohio 44101	2010.37

Chet Rieds Car Parts Ligonier Indiana 46767	1288.50
Curtis Industries Inc. 34999 Curtis Blvd. Eastlake, Ohio 44094	210.73
Eby Ford Sales, Inc. 922 Lincolnway East Goshen, Indiana 46526	2519.24
Elkhart Welding & Boiler Works, Inc. 2132 South Main Street Elkhart, Indiana 46514	336.16
Goshen Auto & Brake Service, Inc. 122 E. Washington Street Goshen, Indiana 46526	1906.25
I. A. Miller-Goshen, Inc. 405 W. Pike Street Goshen, Indiana 46526	29.41
K & K Truck Sales 427 W. Pike Street Goshen, Indiana 46526	3809.80
Kar Products, Inc. 2435 North Western Avenue Chicago, Illinois 20647	540.60
Leslie R. Stupples Dri Power Distributor of Ind. Box 190 Rte. #5 Marion, Indiana 46952	299.55
Lewis Oil Company 714 W. Detroit Street Warsaw, Indiana 46580	1643.63
McCormick Cutter, Inc. 1001 South Huntington Syracuse, Indiana 46567	11,214.07
National Mill Supply, Inc. 201 East Columbia Street Fort Wayne, Indiana 46801	2025.11

Nicolia Machine & Repair Shop 701 South Main Street Syracuse, Indiana 46567	10.23
Nichols Auto Supply 425 Medusa Street Syracuse, Indiana 46567	165.42
Noble Motor Parts, Inc. 125 W. Main Street Kendallville, Indiana	414.28
Northern Gases, Inc. Pierceton, Indiana	25.45
Overhead Door Company of Syracuse, Ind. P.O. Box 625 Syracuse, Indiana 46567	13.04
Plymouth Radiator Repair P.O. Box 132 Plymouth, Indiana	11.20
Smith Motor Supply & Equip. Corp. W. Washington Street Goshen, Indiana 46526	6.71
Syracuse Shell Service Syracuse, Indiana 46567	16.00
The Fullwell Motor Products Co. 14700 Industrial Parkway Cleveland, Ohio 44135	721.89
Wawasee Village Hardware P.O. Box 666 Syracuse, Indiana 46567	27.96
Total	\$ 29,694.68

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# LIBERTY COACH COMPANY INC.

SYRACUSE, INDIANA

P. O. Box 608

Phone 219 - 457 - 3121

November 1, 1966

National Labor Relations Board  
Region 25  
ISTA Center, 150 West Market Street  
Indianapolis, Indiana 46204

Attention: Mr. George M. Dick  
Acting Regional Director

In re: Liberty Coach Company, Inc.  
Case No. 25-RC-3332

Dear Mr. Dick:

In response to your letter of October 31, 1966, the employer's position with respect to the challenged ballots of Max Kleinknight and Richard Timmons is as follows:

1. Said employees are not a part of the stipulated appropriate Collective Bargaining Unit defined as "All production and maintenance employees of the employer at its Syracuse, Indiana establishment," and are not for the following reasons:

(a) The stipulation defined bargaining unit in specific terms and limited the unit to employees of the employer "at its Syracuse, Indiana establishment." Neither Max Kleinknight or Richard Timmons are employed at the employer's Syracuse, Indiana establishment. These two employees are employed at the employer's establishment in the Village of Wawassee, Indiana.

(b) Neither the petitioner union or the employer sought to have these employees included within the stipulated appropriate bargaining unit and lists supplied by the parties to the National Labor Relations Board, and the Board's eligibility list did not include these individuals. Moreover, the petitioner union and the employer signed and agreed to the Board's eligibility list, which did not include these employees.

(c) The reasons for the non-inclusion of these two employees within the stipulated appropriate collective bargaining unit are clear and demonstrate their interests; and the interests of employees within the stipulated appropriate collective bargaining unit are so diverse that it would be to the disadvantage and disinterest of all concerned to have included them within the stipulated unit. The divergencies of the terms and status of their employment, as contrasted with production and maintenance employees of the employer at its Syracuse, Indiana establishment, are as follows:

I. They were hired and employed as truck mechanics for employment at the employer's Wawassee establishment. The Wawassee establishment consists of a building utilized as a repair garage for trucks and a dispatch office for over-the-road trucks. The truck mechanics are under the same supervision as mobile home haul-away drivers, but never in the course of the performance of their duties perform functions at the Syracuse, Indiana establishment, which is sometimes the case of haul-away drivers.

II. None of the employees within the stipulated Syracuse unit have occasion in the performance of their duties to enter or perform functions at the Village of Wawassee establishment.

III. The truck mechanics do not have dual functions or responsibilities and have no contact with the employees comprising the stipulated unit at Syracuse, Indiana, and neither participate or assist or communicate with the employees comprising the stipulated unit at Syracuse; and there are no employees performing truck mechanic duties at the stipulated Syracuse unit.

IV. A separate time clock is maintained at the Wawassee establishment for the truck mechanics, and no employee of the stipulated Syracuse establishment utilized the time clock of the Wawassee establishment.

V. The hours of employment of the truck mechanics at the Wawassee establishment are completely unrelated to the employees of the stipulated Syracuse establishment, and the hours of employment of the truck mechanics do not relate to the hours of operation or activity at the factory establishment at Syracuse.

VI. The payroll work week of truck mechanics at the Wawassee establishment ends on a Thursday instead of a Sunday and they are paid from a different payroll account than the employees of the stipulated Syracuse establishment.

VII. The traditional hourly wage rates of the employer for truck mechanics are completely unrelated to any of the employees within the stipulated Syracuse unit. Further, all of the employees at the stipulated Syracuse establishment participate in the employer's incentive bonus plan which is keyed to production to which all of their activities are directly related; whereas, the truck mechanics at Wawassee have never received incentive bonuses because none of their activities are related to production of mobile homes.

VIII. The employees of the stipulated Syracuse establishment are essentially production carpenters and production sheet metal workers, as opposed to the highly skilled truck mechanics at the Wawassee establishment.

IX. No community of interest exists between the production and maintenance employees of the employer at its Syracuse, Indiana establishment and the truck mechanics at its Village of Wawassee establishment.

X. The petitioner union does not ordinarily represent truck mechanics and has exhibited no interest in truck mechanics and a complete divergence of bargaining interests exists between the truck mechanics and the stipulated appropriate collective bargaining unit.

2. The specific stipulated appropriate collective bargaining unit should be adhered to by the National Labor Relations Board in the conduct of the election and the determination of eligible voters. The challenged truck mechanics neither come within the stipulation nor were they dealt with as eligible voters by the employer or the petitioning union. The extent of the bargaining unit determines the valid pre-election activities of the parties, and members of the bargaining unit often determine the nature of their vote on the basis of the community of interest they feel with other members of a defined bargaining unit.

3. Here, it is obvious that the casting aside of the stipulation and agreed eligible employee list determined by the Regional Director might serve to change results of an election in which the non-challenged valid votes did not give a majority to the International Union of Electrical, Radio and Machine Workers. To count such challenged votes, if they are votes for the petitioner, would serve to impose the petitioner union upon the employees of the stipulated bargaining unit when a majority of such employees have not cast their vote for the petitioner union. Pointedly, that would be the only purpose that validating the challenged ballots would serve in that the interest of the truck mechanics is so divergent from those of the stipulated unit that a community of interest in subsequent collective bargaining would not exist.

4. It is noted that the employer made known that it also challenged the subject ballots, along with the representative of the Board, and the employer objects to the counting or validating of the challenged ballots.

5. It is further noted that in order for the challenged ballots to have any effect upon the results of the election both of them would have to be cast in favor of the petitioner union; and, thus, the two employees votes would be disclosed to all concerned, and the secrecy of the ballot guaranteed by the National Labor Relations Act and the Constitution of the United States would be violated, as well as the election notices of the Board and the agreements of the parties. These ballots, under such circumstances, could not be counted as valid ballots in this election any more than if they had been signed or otherwise marked with identification. The irreparable harm that this would engender is obvious to all concerned and would affect all present and future employees of the company and would constitute intimidation with respect to any future elections, because any employee in such future elections would have to reckon with the fact that the absolute secrecy of his ballot would not exist based upon actions of the Board in this election.

In view of the foregoing, it is respectfully requested that the challenged ballots be determined invalid as cast by ineligible voters. The employer specifically and expressly reserves all of its appellate rights and hearing rights without limitation whatsoever in the premises. The employer will produce its records and witnesses at any hearing as evidence in support of the foregoing or upon request of the Regional Director or Board.

Very truly yours,

LIBERTY COACH COMPANY, INC.



Edward J. Hussey, President

EJH/mes

[Jurat Omitted in Printing]

---

November 2, 1966

National Labor Relations Board  
Region 25  
ISTA Center, 150 West Market Street  
Indianapolis, Indiana 46204

Attention: Mr. George M. Dick  
Acting Regional Director

In re: Liberty Coach Company, Inc.  
Syracuse, Indiana  
Case No. 25-RC-3332

Dear Mr. Dick:

The following is the initial response of the employer, Liberty Coach Company, Inc., to the objections filed by the IUE to the election conducted October 23, 1966:

A. The grounds 1 through 6, set forth by the petitioner in its objections, are false in each and every respect; and neither this employer nor its representatives interfered directly or indirectly with, or coerced, or intimidated its employees, or did any other acts preventing free and fair election. The grounds cited by the petitioner are but a furtherance of a conspiracy by the petitioner and its representatives to falsely accuse the company during the election of acts they now cite as grounds for setting aside the election. The union's own pursuit of acts and misrepresentations and false accusations interferes with, coerces, and intimidates the employees and no doubt can exist, from the facts, that this activity by the petitioner, IUE, influenced the results of the election. However, despite the illegal and unfair pressure brought by the petitioner, the results of the election did not provide the petitioner with a majority of the valid votes. If the results of the election were otherwise, petitioner's acts and conduct would be grounds for setting aside the election, because of petitioner's false accusations against the company, its misrepresentations and interference and coercion, which would then have materially influenced the results of the election. Other examples of the union's conduct in preventing a free and fair election are as follows:

1. Falsely accusing the employer in a so-called "news bulletin" dated October 26, 1966 of granting an extra bonus to fool employees in the course of pre-election activity.

2. Falsely attempting to create an impression that a majority of Liberty Coach workers had signed IUE cards and obtaining signatures on such cards through pretenses and unlawful inducements.

3. Falsely accusing, in campaign literature dated October 21, 1966, the plant superintendent of the company of actions and remarks with respect to election activity and characterizing those remarks as disgraceful and illegal.

4. Falsely accusing the plant superintendent of the company of illegal "fear tactics" for the purpose of influencing employees votes in the election.

5. Falsely accusing the plant superintendent of the company of threatening to close the plant when the union was voted in in violation of Federal Labor Law.

6. Falsely accusing the plant superintendent of the company of threatening to take away the Christmas bonus if employees voted yes.

7. Falsely accusing the plant superintendent of the company of threatening to take smoking privileges away when the union "wins."

8. Falsely characterizing the plant superintendent as a desperate man doing desperate things.

9. Falsely accusing the plant superintendent of the company of having something to hide.

10. Offering of waivers of initiation fee for signing an IUE card on or before the election and as an inducement for voting yes.

B. Distributing copies of a sham letter dated October 21, 1966, addressed to the company President, accusing the plant superintendent of activity such as "to interfere with, restrain, or coerce employees in the exercise of these rights," and accusing the plant superintendent of violations of 8 (a) 1 of the law, and falsely accusing the plant superintendent of additional actions such as questioning employees about their union activity in a manner so as to restrain or coerce the employee.

C. Falsely accusing the plant superintendent of spying on union meetings or pretending to spy.

D. Falsely accusing the plant superintendent of granting wage increases, deliberately timed to discourage employees from forming or joining the union.

E. Falsely accusing the plant superintendent of manipulation of the production bonus and of buying votes against the union.

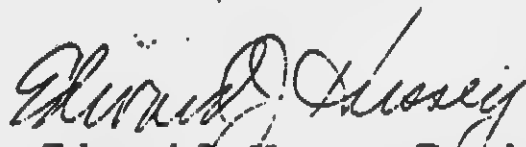
This activity on the part of the petitioner union was initiated first by distributing to employees a brochure in which a bold type caption states "The boss is breaking the law if he does any of these things"; and, "coincidentally," many of the examples given are the grounds now cited and the false accusations made by the petitioner during the course of pre-election activity. Contrasted with the accusations and allegations of the petitioner is the fact that seldom has any employer gone to greater effort to avoid even the slightest influence upon its employees in the free exercise of their voting privilege. The employer distributed no propaganda of any nature through the mails or in handouts to its employees and did not call its employees together, collectively or individually, for the purpose of legitimately influencing their votes, let alone the illegal activities now complained of by the petitioner.

At the conclusion of the organizational election prior to the one in question, the International Union there involved, in a letter dated October 17, 1951, advised each employee of the company "the results of the October 6th election were certainly a great disappointment to all of us, but it was fairly conducted in the most democratic manner and without pressure from the Company." The same management and the same plant superintendent existed in this election.

Had this election resulted in a majority for the petitioner, it is obvious that it would only have occurred because of the illegal and unfair tactics complained of herein.

Respectfully submitted,

LIBERTY COACH COMPANY, INC.

  
Edward J. Hussey, President

[Jurat Omitted in Printing]

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LAW OFFICES  
**SHEA & SHEA**  
 3040 GUARDIAN BUILDING  
 DETROIT, MICHIGAN 48226

WOODWARD 3-1610  
 WOODWARD 3-1611

JAMES F. SHEA  
 JOHN C. SHEA  
 FRANCIS L. WALSH

November 21, 1966

Mr. George M. Dick  
 Acting Regional Director  
 National Labor Relations Board  
 Region 25  
 ISTA Center, 150 West Market Street  
 Indianapolis, Indiana 46204

Attention: Albert N. Stieglitz, Attorney

In re: Liberty Coach Company, Inc.  
 Case No. 25-RC-3332

Gentlemen:

Pursuant to your letter of November 16, 1966, please be advised that the employer has heretofore submitted, as part of its own objections, its position concerning the union's objections.

You raised a question in our telephone conversation as to whether the employer's objections heretofore filed qualified as objections. In this connection, it is my understanding there is no specific form for objections; and, certainly, the employer set forth the misrepresentations and conduct of the union that resulted in unfairly influencing and coercing the direction of the election. They were filed in affidavit form, which is not true of the union's objections; and, further, they were filed within the time requirements and service requirements of the Board; and it is clear from the premises set forth in these objections that they were intended as objections. A major question with respect to the employer's objections is whether or not the matters complained of had a determinative influence on the results of the election. Obviously they did not, if the count, as it exists today, is finalized. If the challenged ballots change the results insofar as a majority for the union would be concerned, then they did have a determinative influence.

We believe the union should be required to respond as to their position to the objections filed by the employer and that this response should be detailed.

In connection with the objections of the union insofar as conduct of Mr. Ted Auer or other supervisors of the employer is concerned, their affidavits of their conduct will be the best evidence. All supervisory personnel of Liberty Coach Company, Inc. were instructed not to interfere in any manner whatsoever with union activities in relation either to the campaigning prior to the election or the election itself.

Insofar as allegations of the union relating to illegal raises or bonuses by the employer, the following information is submitted:

A. The employer did not give any raises to its employees subsequent to the employer having any knowledge of any union activity. The employer gave an hourly raise early in the year 1966, and on September 12, 1966 the employer gave an increase of ten cents an hour, and at the time of announcing this ten cent an hour raise informed all employees that effective January 30, 1967 wages would be increased another ten cents an hour. The purpose of the immediate and prospective raise announced on September 12, 1966 was twofold in nature.

1. The employer had had a considerable turnover due to the pressure of general high employment in its area and the fact that certain competitors, working on a piece rate basis, would give high piece rate compensation to selected individuals for limited periods of time to induce employees to leave Liberty's establishment in Syracuse. It was hoped that raises in the employees hourly base rate would stabilize employment in the employer's establishment in Syracuse, Indiana. The employer's problem in this connection was that even though total annual compensation paid by it to employees exceeds the industry's norms in its area, employees are sometimes prone to compare isolated pay checks of a competitor's employee, not recognizing that such competitors' employees' average pay check is far less than this employers, and that the competitor's employee was more subject to plant layoffs than employees at Liberty; and, consequently, the competitors' employees' annual pay checks were far less than Liberty's. The reason for deferring ten cents of the hourly raise to January 30, 1967 was to allow the employer an opportunity of building the cost of this raise into its product at the annual Louisville Mobile Home Show introducing the 1967 models.

2. Another reason for the raises was to compensate for the inflationary pressures that were affecting employees in meeting their own personal obligations, and which factors were receiving such wide publicity in September of 1966.

The employer had no knowledge of union activity in its plant as of September 12, 1966.

B. The employer's production bonus during the period of union pre-election activity and through the period of the election and presently has not changed in any respect. Because it is a production bonus, it, of course, varies with production. The following schedule will demonstrate, comparing the year 1965 to 1966, that the bonuses vary for all months of the year:

<u>1965</u>		<u>1966</u>	
<u>Week Ended</u>	<u>Bonus Rate</u>	<u>Week Ended</u>	<u>Bonus Rate</u>
August 29	88¢	August 28	56¢
September 5	76¢	September 4	48¢
September 12	72¢	September 11	48¢
September 19	92¢	September 18	52¢
September 26	96¢	September 25	64¢
October 3	\$1.00	October 2	92¢
October 10	96¢	October 9	84¢
October 17	64¢	October 16	88¢
October 24	60¢	October 23	80¢
October 31	56¢	October 30	72¢
November 7	\$1.68	November 6	56¢
November 14	\$1.84		
November 21	\$1.12		
November 28	\$1.04		
December 5	\$1.60		
December 12	52¢		
December 19	40¢		
December 25	36¢		

It is noted that there is no way in which the employer can change the bonus structure, inasmuch as the formula is fixed.

With respect to the challenged ballots, the following information is submitted to reflect the fact that a minimal contact exists between the garage mechanics and any relationship to the employer's stipulated establishment in Syracuse, Indiana. The union, in its correspondence to the Board, has attempted to make much of isolated incidences, half facts and misstatements of fact in connection with the duties of the employer's truck mechanics. As an example, the truck mechanics for the full year 1965 worked 5,266.2 hours. Of that total 4,987.2 hours were spent solely on the company's over-the-road haul-aways. Accordingly, 95% of their time was devoted solely to haul-away trucks. The other 5% of their time was utilized on the company's two other trucks, which were not repaired at the Syracuse establishment, but at the mechanics own establishment. In this connection, the union had originally excluded all truck drivers, and it was the employer that limited the exclusion to haul-away drivers.

As to the year 1966, through November 10, 1966 the employer's truck mechanics worked a total of 4,515 hours, of which 4,393 hours were devoted exclusively to haul-away trucks, or a total of 97.3% of their work was devoted exclusively to haul-away trucks. The remaining 2.7% was spent principally on the employer's two other trucks and at the mechanics own establishment. The union has made much of the efforts of the mechanics in connection with the employer's fork lift trucks. In this connection, such efforts would not comprise 1% of their time and this would be spent principally at their own establishment. The employer has a service contract with an outside company to service its fork lift trucks, and it would only be an emergency that would require the efforts of the truck mechanics in this regard.

It is clear that the union claims it had representation cards from the two truck mechanics prior to the election, but it also had the employer's list of eligible employees and had not informed the Board that it claimed the mechanics who were excluded as eligible voters. Consequently, the Board's eligibility list did not include the truck mechanics. These mechanics did not arrive at the polling place until long after the eligible employees had voted. Certainly, the union, under these facts, is estopped from questioning the Board's eligibility list and, especially, after its representative signed and approved that list after a discussion concerning the mechanics and with the full knowledge that the employer considered them ineligible and that the Board did.

It cannot be considered good faith on the part of the union to raise this issue when they did, when only they, if their claims are believable, had knowledge of any controversy concerning the truck mechanics before the election and should have raised that issue when it could have been disposed of prior to the election. The employer had the right to state its position fairly to these employees if they were to be included as part of the unit, and the union should not be permitted to breach its stipulation in this regard. These employees would thus have been denied their right to be informed fully by both sides.

Another matter that the employer now requests the Board to investigate is the rumor that is circulating in its Syracuse establishment that the union has coerced one of the garage mechanics and attempted to coerce another into signing an affidavit as to the nature of their vote in the challenged ballots. The employer believes that this activity on the part of the union would render these votes invalid, even if they were otherwise eligible ballots.

In connection with your visit to Syracuse, we would suggest that your interviews with all witnesses be conducted on neutral ground rather than in the company's establishment during working hours. The reason for this is that the union has circulated certain of its communications with the Board to employees, and we feel that interrogating the employees would lend credence to the union's objections, which are without merit.

Very truly yours,  
SHEA & SHEA  
James F. Shea

LAW OFFICES  
**SHEA & SHEA**  
3040 GUARDIAN BUILDING  
DETROIT, MICHIGAN 48226  
—  
WOODWARD 3-1610  
WOODWARD 3-1611

JAMES F. SHEA  
JOHN C. SHEA  
FRANCIS L. WALSH

December 12, 1966

National Labor Relations Board  
Region 25  
ISTA Center, 150 West Market Street  
Indianapolis, Indiana 46204

Attention: Mr. George M. Dick  
Acting Regional Director

In re: Liberty Coach Company, Inc.  
Syracuse, Indiana  
Case No. 25-RC-3332

Dear Mr. Dick:

With reference to our telegram to you of Friday, December 9, 1966, and our subsequent telephone conversation of that date wherein you granted an additional week for submission of our evidence, please be advised that the court reporter was to submit, as of this date, the transcripts taken through last Thursday evening with the exception of the testimony of Mr. Pletcher. Mr. Pletcher's testimony will be furnished as soon as it is transcribed. In this respect, his testimony, insofar as the offer of the company, will be limited in nature in accordance with a transmittal letter to be forwarded.

The evidence submitted by the company will demonstrate that not only is the Liberty garage operation a completely separate operation from a bargaining unit standpoint, but it will demonstrate that the garage operators actually have substantial management functions, as well as clerical responsibilities, and are in a confidential and fiduciary and security relation to Liberty Coach Company, Inc.

Consequently, even if the operation were not completely independent from the establishment at Syracuse, the so-called garage mechanics would be excluded and ineligible on the basis that they constitute management, clerical, confidential and security people in their relationship to Liberty. Their own testimony will demonstrate this fact.

Very truly yours,

SHEA & SHEA  
James F. Shea

LAW OFFICES

## SHEA &amp; SHEA

3040 GUARDIAN BUILDING

DETROIT, MICHIGAN 48226

WOODWARD 3-1810

WOODWARD 3-1811

JAMES P. SHEA

JOHN C. SHEA

December 15, 1966

National Labor Relations Board  
Region 25  
ISTA Center, 150 West Market Street  
Indianapolis, Indiana 46204

Attention: Mr. George M. Dick  
Acting Regional Director

In re: Liberty Coach Company, Inc.  
Syracuse, Indiana  
Case No. 25-RC-3332

Dear Mr. Dick:

In amplification of, but not in limitation of, the company's positions communicated heretofore, we respectfully submit the following:

In particular as to the letter of IUE signed by Ted Nolan and dated October 21, 1966, which letter was mailed to all Liberty employees as an enclosure with a union "News Bulletin" dated October 21, 1966, the testimony and evidence submitted to the Board will show:

1. That although the bulletin states at the bottom "Issued by your Organizing Committee" and then names thirteen Liberty employees-- that in fact it was not issued by these Liberty employees, and that in sworn testimony these Liberty employees have repudiated its contents, and testified that they would never have endorsed the contents of that bulletin or signed their names to it. Moreover, several members of the so-called Organizing Committee have testified they had never consented to becoming members of the committee. Further, every member of the Organizing Committee questioned, testified that they personally knew of no event where Ted Auer had threatened anyone or did any of the acts alleged.

Further, every employee, including the members of the Organizing Committee, testified that no member of management or supervision attempted to interfere with or restrain union activity, election activity or organizing activity; that all employees were treated fairly in the election; and that pre-election environment of Liberty was free, open and uncontaminated by any company restraint or coercion.

2. To the company's knowledge, no real attempt has been made by the union to produce evidence supporting the charges leveled against Ted Auer. If there has been, the company has no knowledge of its nature and has had no opportunity to refute such evidence. Certainly, if the union, after seeking to make charges against Ted Auer a central theme in the election, chose to ignore those charges in producing evidence on its objections, then it is obvious those charges were a deliberate sham in a grossly insidious scheme to take malicious and unfair advantage of this company and its employees, and the National Labor Relations Board. It is the type of conduct on the part of a union that if it succeeds, will strike at the very roots of the precepts to which the Board is dedicated.

3. A review of the evidence collected by the company will demonstrate that Liberty did everything possible to see that an atmosphere of freedom and an environment of free, unrestrained and unthreatened choice existed in the recent N. L. R. B. election. All employees were free to talk and solicit union membership on the job, and the fact that they freely did so, signed representation cards on the job, wore union buttons, and felt no necessity to hide union affiliations is the best evidence that the company should be commended by the Board for its efforts to adhere to the Board's policies in the pre-election activity. Indeed, every employee testified that no attempt was made by the company to present its views in any manner to any employee.

4. Mr. Ted Nolan, the author, issuer and publisher of the union literature, would now take the position that the company had an opportunity to refute the lies contained in that literature. Mr. Nolan seeks to take advantage of decisions by the National Labor Relations Board that have no application to the facts herein. It is obvious that he had a pre-election intent in this regard and is playing games, not only with the company but with the Board.

The company had no opportunity to refute the charges authored and published by Ted Nolan. In the first place, a blanket denial by the company on election eve would have only served to re-publish the charges and further confuse and inflame the situation. It would have been one matter if Mr. Nolan had stopped with his letter. Instead, he put out the News Bulletin of October 21, 1966, but made it appear as if said bulletin was issued and endorsed by thirteen employees of Liberty Coach Company, and that those thirteen employees were claiming that the allegations in that News Bulletin were fact. The only way the company could have adequately refuted those charges would have been to conduct an investigation, interrogate the thirteen, as well as other employees, and after establishing the facts, obtain public disavowals from the thirteen individuals concerned.

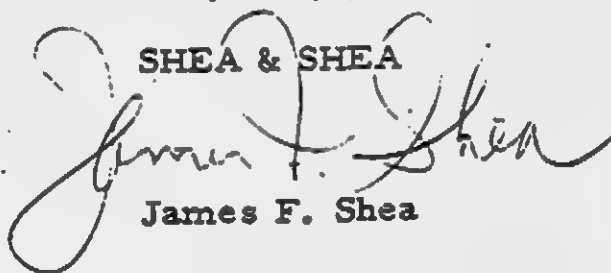
The company did not have sufficient time to conduct such an investigation and the company's very acts in doing so would have made it severely subject to unfair labor charges and completely undermined the freedom of the election. Mr. Nolan knew this. Pointedly, if the company had without an investigation called thirteen of its employees liars, what would have been the result. It turns out that the thirteen were not involved in issuing the bulletin of October 21, 1966, but that Mr. Nolan was. Mr. Nolan should not be permitted to subvert the very laws and policies laid down to protect employees from over-reaching employers. That subversion would undermine those laws and policies. It is interesting to note that Mr. Nolan had a personal and enduring motive for attacking Ted Auer, completely ungermane to the election, which motive is covered by sworn evidence. To misrepresent is one thing; to compound those misrepresentations by attributing them to others is insidious.

The company is in no way limiting its objections by the foregoing comment. It is noted that, although the transcript is somewhat confused on this point, the company will withdraw its objections if, but only if, the Board determines that the challenged ballots are invalid and the garage operators are not eligible to vote.

It is further noted that the company has submitted completely all testimony taken by the company or its attorney. As to the testimony of various people on the Organizing Committee, the company is not adopting their testimony or opinions as to when it first had knowledge of union activity. Those individuals are in a sense in this proceeding adverse parties. Their testimony is contradictory in this respect. Further, the company is not submitting as its own their testimony where it is contradicted by other testimony by management personnel and other employees. Note that Gobe Auer testified the first efforts at organization were accomplished secretly.

Very truly yours,

SHEA & SHEA



James F. Shea

---

LAW OFFICES

SHEA &amp; SHEA

3040 GUARDIAN BUILDING

DETROIT, MICHIGAN 48226

JAMES F. SHEA

JOHN C. SHEA

WOODWARD 3-1610

WOODWARD 3-1611

December 16, 1966

National Labor Relations Board  
Region 25  
ISTA Center, 150 West Market Street  
Indianapolis, Indiana 46204

Attention: Mr. George M. Dick  
Acting Regional Director

In re: Liberty Coach Company  
Syracuse, Indiana  
Case No. 25-RC-3332

Dear Mr. Dick:

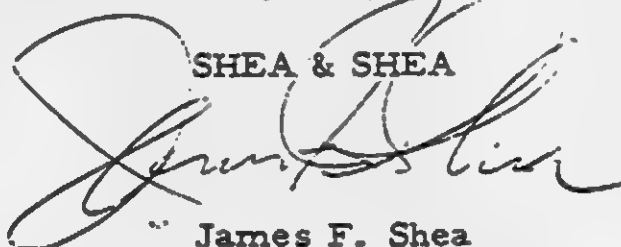
In amplification of, but not in limitation of, the position of the company in the subject case, we would like to submit the following:

The union stated that its offer in the News Bulletin of October 21, 1966, to give a charter membership free from the burden of initiation fee, was not in violation of the law. It should be noted that this offer was coupled in juxta position to the statement, "Sign your card today.. and vote "Yes" on October 28th." Again the union is attempting to take advantage of the law, rather than to treat honestly and fairly with the requirements of the law. By coupling the offer with the quoted statement, it is obvious that Mr. Nolan intended to connote that a vote "yes" was required for the free initiation fee.

This statement was contained in the News Bulletin of October 21, 1966, and on the basis of evidence submitted to the Board and previously commented on, it is obvious that this Bulletin was not written in good faith and Mr. Nolan and the union are in the posture as to that Bulletin of now trying to isolate the statement with respect to the initiation fee and claim that it was made in good faith, whereas the facts demonstrate the News Bulletin and accompanying letter were shams in every respect.

Very truly yours,

SHEA & SHEA



James F. Shea

473

LAW OFFICES  
**SHEA & SHEA**  
3040 GUARDIAN BUILDING  
DETROIT, MICHIGAN 48226  
WOODWARD 3-1610  
WOODWARD 3-1611

JAMES F. SHEA  
JOHN C. SHEA  
FREDERICK WM. HEATH

AIR MAIL  
REGISTERED  
RETURN RECEIPT

May 18, 1967

Mr. William T. Little  
Regional Director  
National Labor Relations Board  
Region 25  
ISTA Center, 150 West Market Street  
Indianapolis, Indiana 46204

In re: Liberty Coach Company, Inc.  
Case No. 25-RC-332  
Objections

Dear Mr. Little:

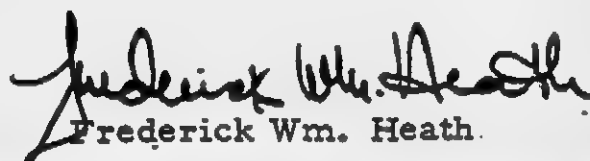
The employer hereby renews its objections to illegal and unfair conduct on the part of petitioner union effecting the results of the election as setforth in prior correspondence, objections, exceptions, briefs, documentary evidence, and transcripts and evidence filed with the Regional Director and National Labor Relations Board, all of which is incorporated herein by this reference.

The employer further objects to the denial to the employer of fair and just administrative procedures in the investigation and review of objections and challenges and exceptions by the Regional Director and the National Labor Relations Board wherein the evidence has been completely disregarded without affording the employer a hearing.

The employer further objects to election procedures followed by the Regional Director that are completely contrary to election procedures established for two hundred years in this country, and specifically contrary to the statute requiring a secret election, as setforth in challenges incorporated herein by reference.

Very truly yours,

LIBERTY COACH COMPANY, INC.

  
Frederick Wm. Heath.

# UNITED AUTOMOBILE · AIRCRAFT · AGRICULTURAL IMPLEMENT WORKERS of AMERICA (UAW)



INTERNATIONAL HEADQUARTERS • 6000 EAST JEFFERSON AVENUE • DETROIT 14, MICHIGAN

WALTER P. REUTHER  
PRESIDENT  
EMIL MAZEY  
SEC. TREAS.

RICHARD GOSSEN  
VICE PRESIDENT  
NORMAN MATTHEWS  
VICE PRESIDENT

LEONARD WOODCOCK  
VICE PRESIDENT  
PAT GREATHOUSE  
VICE PRESIDENT

RAYMOND H. BERNDT, DIRECTOR  
REGION NO. 3, UAW  
1701 W. 18TH ST.  
INDIANAPOLIS 7, INDIANA

SUB-REGIONAL OFFICE  
814 WEST INDIANA AVE.,  
SOUTH BEND, INDIANA

TELEPHONE

REGIONAL OFFICE—MELROSE 4-7334  
SUB REGIONAL OFFICE—AT. 9-1923

October 17, 1961

## LIBERTY COACH EMPLOYEES

Greetings,

The results of the October 6th election were certainly a great disappointment to all of us, but it was fairly conducted in the most democratic manner and without pressure from the Company.

Had everyone that signed a card voted yes, we would have won with a good majority, but it was their right to change their minds - even though it was not to their own benefit.

Our organizing drive did wake management up to the extent that most of the employees got a small pay raise and that is worth something.

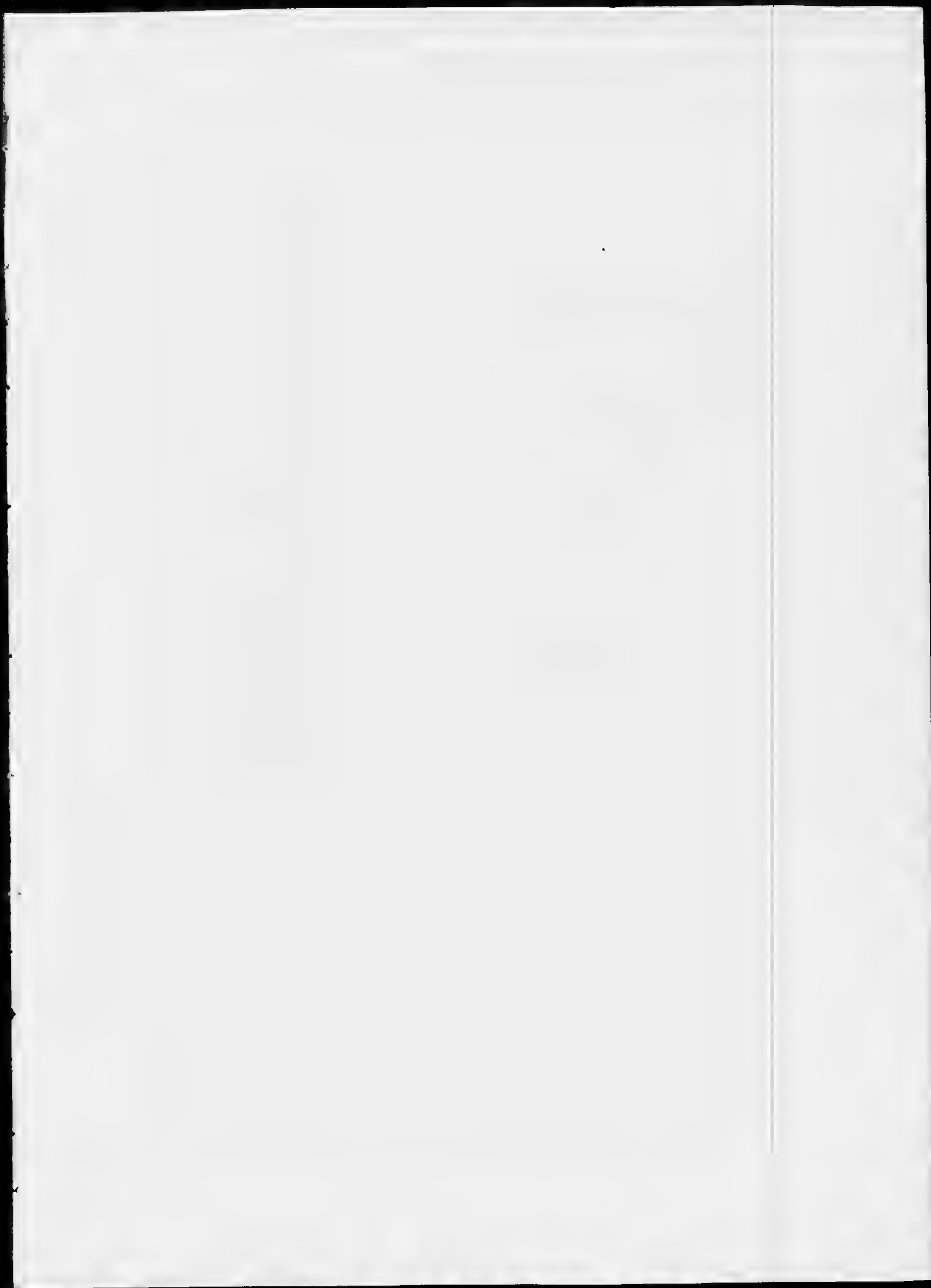
Perhaps a year of serious reflection on what they could have gained by a different vote will make a lot of people wish to make a better "thought out" decision next year. We will be in communication with you later.

With best wishes to you and your family, I am

Fraternally yours,

*James D. Hill*

James D. Hill  
International Representative,  
Region No. 3, UAW



IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

INTERNATIONAL UNION OF ELECTRICAL,  
RADIO AND MACHINE WORKERS, AFL-CIO

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

LIBERTY COACH COMPANY, INC.,

Intervenor.

LIBERTY COACH COMPANY, INC.,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

INTERNATIONAL UNION OF ELECTRICAL,  
RADIO AND MACHINE WORKERS, AFL-CIO,

Intervenor.

No. 22,181

United States Court of Appeals  
for the District of Columbia Circuit

FILED JAN 31 1969

*Nathan J. Paulson*  
CLERK

No. 22,394

ON PETITION TO REVIEW AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

BRIEF FOR PETITIONER IN No. 22,181

Irving Abramson  
Ruth Weyand  
Melvin Warshaw  
1126 Sixteenth Street, N.W.  
Washington, D.C. 20036

Attorneys for Petitioner

(i)

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AUTHORITIES CITED

Cases:

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Franks Bros. Co., 44 NLRB 898, enf'd sub nom.....	28
Franks Bros. Co. v. N.L.R.B., 137 F.2d 989 (1st Cir. 1943), aff'd 321 U.S. 702 (1944) .....	28
General Electric Co., 9 LA 757.(Wallen, 1948) .....	23
Great Dane Trailers, Inc., ____ U.S. ____ (1967), 65 LRRM 2465 .....	22
Hartmann v. Gleason, 126 F.2d 946 (6th Cir. 1942) .....	28
Heliport Corp., 19 LA 619 (Warren, 1952) .....	23
International Brotherhood of Operative Porters v. N.L.R.B., 116 U.S. App. D.C. 315, 320 F.2d 757 (1963) .....	32
International Chemical Workers Union v. N.L.R.B., ____ U.S. App. D.C. ____, 395 F.2d 639 (1968) .....	32
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Knickerbocker Plastics Co., Inc., 104 NLRB 514, enf'd 218 F.2d 917 (9th Cir. 1955).....	26
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N.L.R.B. v. Armco Drainage & Metal Products, Inc., 220 F.2d 573 (3rd Cir. 1955), cert. den. 364 U.S. 933.....	28
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Shell Oil Co. (Roxana, Ill.), 167 NLRB No. 32 (1968).....	14
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Stark Ceramics, Inc. v. N.L.R.B., 375 F.2d 202 (6th Cir. 1967).....	22
J. P. Stevens and Co., Inc., 157 NLRB 869, enf'd in sub part 380 F.2d 292 (2nd Cir. 1967) cert. den. 389 U.S. 1005.....	13, 15
J. P. Stevens and Co., Inc., 163 NLRB No. 24 (1967), enf'd as mod 388 F.2d 898 (2d Cir. 1967), cert. den. ___ U.S. ___ (1968).....	15
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United States Gypsum Company, 94 NLRB 112 (1951), mod. 206 F.2d 410 (5th Cir. 1953), cert. den. 374 U.S. 912 (1954).....	22
United Steelworkers of America, AFL-CIO (H. K. Porter Company) v. N.L.R.B., 124 U.S. App. D.C. 143, 389 F.2d 295 (1967).....	13
United Steelworkers of America v. N.L.R.B., 389 F.2d 299.....	18, 21, 24, 25
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Jones & Smith, Management and Labor Appraisals and Criticism of the Arbitration Process, 61 Mich.L.Rev. 1115 at p. 1 (1964).....	24
McCulloch, New Remedies Under The National Labor Relations Act, New York University, 21st Annual Conference on Labor, CCH Lab.Law Rep., Par. 8122.....	30
McCulloch, Past, Present and Future Remedies Under Section 8(a)(5) of the National Labor Relations Act.....	30
McCulloch, Remedies for Unfair Labor Practices, 14th Annual Institute of Labor Law of the Southwestern Legal Foundation, CCH Lab.Law Rep., Par. 8100.....	30

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Ross, Analysis of Administrative Process Under Taft-Hartley, BNA Labor Relations Yearbook, 1966, pp. 229-302, 63 Lab.Rel.Rep. 132.....18,	27
United States Department of Labor, Major Collective Bargaining Agreements—Arbitration Procedures, Bulletin No. 1425-6, June, 1966.....24,	25

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

INTERNATIONAL UNION OF ELECTRICAL,  
RADIO AND MACHINE WORKERS, AFL-CIO

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

LIBERTY COACH COMPANY, INC.,

Intervenor.

LIBERTY COACH COMPANY, INC.,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

INTERNATIONAL UNION OF ELECTRICAL,  
RADIO AND MACHINE WORKERS, AFL-CIO,

Intervenor.

No. 22,181

No. 22,394

ON PETITION TO REVIEW AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

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BRIEF FOR PETITIONER IN NO. 22,181

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Statement Of Issue Presented For Review

The issue presented in No.22,181 is whether the Board erred in refusing to grant the additional remedies sought by the Union.

(The pending case has not previously been before this Court under the same or any other title.)

Statement Of The Case

This case is before the Court on petitions pursuant to Section 10(f) of the National Labor Relations Act, 29 U.S.C. 8160(f), for review of a decision and order of the National Labor Relations Board issued on August 1, 1968, officially reported at 172 NLRB No. 154, and on cross-application for enforcement of that order by the Board. The Union, International Union of Electrical, Radio and Machine Workers, AFL-CIO and petitioner in No. 22,181, filed its petition in this Court on August 2, 1968. Subsequently, Liberty Coach Company, petitioner in No. 22,394, filed its petition in the Court of Appeals for the Seventh Circuit and that matter was transferred to this Court on October 10, 1968 pursuant to 28 U.S.C. 82112. Both cases have been consolidated by this Court, and each petitioner is an intervenor in the proceeding initiated by the other petitioner.

The order to which both petitions are addressed was issued in proceedings before the Board under the provisions of Sections 10(b) and 10(c) of the National Labor Relations Act (hereinafter,

the "Act"), pursuant to a complaint theretofore issued by the Board's Regional Director for the Twenty-fifth Region wherein Liberty Coach Company (hereinafter, the "Company") was charged with certain unfair labor practices in violation of Sections 8(a)(1), 8(a)(3) and 8(a)(5) of the Act.

### Statement Of The Facts

#### A. Statement

This brief addresses itself to the issue in No. 22,181, namely the inadequacy of the relief ordered by the Board to redress the refusal-to-bargain violations which it found the Company committed.

In No. 22,394 the Company has raised a number of issues (App. ) with respect to the merits of the Board's decision. Although the Union has intervened in that proceeding, we see no need to brief those issues at this stage since the Company's brief has not yet been filed and the Board will presumably adequately defend its own decision. Should we desire to supplement the arguments presented by the Board, we shall do so in our reply brief.

In our brief, we will set forth and discuss the Board's findings only to the extent they bear upon the sufficiency of the remedy. We will show the necessity for the additional relief requested as well as the ineffectual nature of the remedy devised by the Board.

B. The Representation Proceedings (25-RC-3332)

On September 27, 1966, the Union petitioned the Board for an election to be held in a unit of "all production and maintenance employees at the Company's plant in Syracuse, Indiana, excluding all truck drivers, guards, professional, technical and salaried employees, and supervisors as defined in the Act"(App.       ). Thereafter, the Company and Union entered into a "Stipulation for Certification Upon Consent Election" for a different bargaining unit consisting of "all production and maintenance employees of the Employer at its Syracuse, Indiana establishment but excluding all office clerical employees, all mobile home haulaway drivers, guards, and all professional employees and supervisors as defined by the Act" (App.       ).

An election, pursuant to said stipulation, was conducted on October 28, 1966. The Union received 94 votes, 94 votes were cast against representation, and two ballots were challenged (App.    ).

Both the Company and the Union filed objections to the election which, together with two challenged ballots, were investigated by the Regional Director. On December 29, 1966, the Regional Director issued his report which recommended the election objections be overruled and that the challenges to the two ballots be sustained because these two employees were garage mechanics and not in the unit (App.       ).

Both the Company and Union filed exceptions to the Regional Director's report and on April 24, 1967 the Board issued its decision

(App.       ) which adopted the Regional Director's recommendations on the election objections but held that the two challenged ballots should be counted because they were cast by employees whose inclusion in the unit was not inherently inappropriate as a matter of law (App.       ).

On April 28, 1967 the Company filed a motion to have the Board reconsider its decision. On May 9, 1967 the Board denied said motion because it failed to raise material and substantial issues and, adhering to its original decision, the Board directed the Regional Director to open and count the two outstanding ballots (App.       ).

On May 16, 1967 the ballots were opened and both were found to have been marked "Yes" for union representation. Thereupon the Company filed objections to including the two ballots in a final tally because of alleged physical infirmities with respect to one; and because of the secrecy of the second was claimed to have been violated. On June 16, 1967, the Regional Director issued his report which recommended certification of the Union on the finding that the first ballot was not void simply because two lower corners had been torn off. Since this one ballot was determinative of the Union's majority, the Regional Director found that it was not necessary to consider the objections to the second ballot (App.       ). The Company thereupon filed exceptions to said report.

On August 16, 1967 the Board rejected the Company's exceptions, adopted the Regional Director's recommendations, and certified

the Union as the exclusive bargaining representative of the employees in the appropriate unit (App.        ).

C. The Unfair Labor Practice Proceeding (25-CA-2921)

On August 17, 1967 the Union requested the Company to bargain with it as the certified representative of its employees in the appropriate unit. The Company refused. On October 24, 1967, following the filing of charges by the Union, the Board issued a complaint which alleged that the Company had unlawfully refused to bargain with the Union in violation of Section 8(a)(5) of the Act. The complaint also alleged violations of Section 8(a)(3), with respect to the discharge on September 5, 1967 of one of the most active members of the Union's organizing committee, and violations of Section 8(a)(1) with respect to the Company's coercion and intimidation of employees following the certification of the Union (App.        ).

On February 12, 1968 Trial Examiner Melvin Pollack issued a decision and recommended order that the Company cease and desist from refusing to bargain with the Union. Said order recommended the dismissal of the other allegations of unfair labor practices in the complaint (App.        ). Both the Company and Union filed exceptions to the Trial Examiner's decision and recommended order (App.        ). With respect to the remedy recommended for the refusal to bargain violation, the Union requested that the Board order the Company to take certain additional remedial relief, as follows:

(1) That Respondent upon request of the Union made within one month after this order becomes effective, immediately grant the Union and its Representatives:

(1) a list of the names and addresses of all employees within the unit with job classifications and rates, and all fringe benefits, and for a period of three years thereafter promptly inform the Union of all changes in said list;

(2) Reasonable access for a 3 year period to its bulletin boards and all places where notices to employees are customarily posted.

(2) That Respondent makes its employees whole for all losses in wages, insurance, pension or other fringe benefits which the employees of Respondent have suffered since August 17, 1967, by paying them such amounts as there is reasonable basis for finding they would have received had Respondent bargained in good faith with the Union immediately following its certification.

(3) That Respondent make all provisions of any contract negotiated between the Union and the Respondent including wage increases and fringe benefits, retroactive to August 17, 1967.

(4) That Respondent upon request of the Union made within one month after this order becomes effective, meet with any representative designated by the Union to deal with all grievances which have arisen in the plant since August 17, 1967, and if such grievances cannot be resolved to the satisfaction of the Union and the Respondent, that the Union may, within 30 days after receiving a final written answer from Respondent to any grievance or grievances, request arbitration by written notice to Respondent, and Respondent shall then submit such grievance or grievances to binding arbitration before an arbitrator to be mutually agreed upon between Respondent and the Union, with expenses of such arbitrator to be paid half by the Union and half by the Employer. In any such arbitration, all past practices and conditions existing in the plant at the time the grievance arose are to be treated as if incorporated into a contract between the Union and the Respondent, except that irrespective of any existing past practice or condition in the plant, the arbitrator shall consider that one term and condition of employment at all times on and after August 17, 1967, was that no employee should be disciplined or discharged except for just cause. If the Union and

the Respondent cannot mutually agree upon an arbitrator within 30 days after the receipt by the Respondent of a written request from the Union for arbitration, the Union shall request the Federal Mediation and Conciliation Service to submit a panel of seven names and each the Union and the Respondent shall take turns in striking therefrom a name at a time until only one name remains and that name shall be the arbitrator to hear the grievance or grievances so noticed for arbitration. Said right to arbitrate all grievances shall continue until superseded by any collective bargaining agreement signed by the Union and the Respondent or for 3 years from the date this order becomes effective, whichever shall occur first.

On August 1, 1968 the Board issued its decision and order which found that the Company violated Sections 8(a)(1) and 8(a)(3) of the Act, as alleged in the complaint, but in the case of the 8(a)(5) refusal-to-bargain violation, the Board issued a cease and desist order and did not adopt any or all of the additional remedy requested by the Union in its foregoing exceptions (App.        ).

## ARGUMENT

### The Board Erred In Refusing To Grant The Additional Relief Requested By The Union

The Board's order, insofar as it relates to the Company's refusal to bargain, was confined to a standard cease and desist provision and a prospective direction to bargain. The Board denied, without discussion, the Union's request for compensatory and other relief, including an effective grievance procedure so as to maintain existing practices and conditions together with the prohibition against unjust discharges. The Board failed to provide such relief although it is currently engaged in a major reassessment of its remedial policies applicable to refusal-to-bargain violations such as the one in this case.

In Section 10(c) of the Act, Congress gave the Board broad power "to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of the Act." This power, in the words of this Court, remedially requires the "restoration of the status quo to the greatest extent practicable; however, the basic purpose of restoring the status quo is to redress the injury done to employees [citations omitted]." Local 57, International Ladies Garment Workers Union, AFL-CIO v. N.L.R.B., 126 U.S. App. D.C. 81, 86, 374 F.2d 295, 300, cert. den. 387 U.S. 942 (1967). We will show that unless relief requested by

the Union is granted it will be impossible to restore the status quo ante and the Board's refusal-to-bargain order cannot, therefore, effectuate the policies of the Act.

The additional relief sought by the Union generally falls in three categories: (1) informational--consisting of the names and addresses of all bargaining unit employees, access to bulletin boards, and disclosure of the employees' rates and other existing conditions of employment; (2) compensatory--consisting of: (a) an amount equal to the wages and fringe benefits that the employees would have received following the Union's certification (August 17, 1967), the payment of which is necessary to make the employees whole for the losses they suffered because of the Company's refusal-to-bargain in good faith; and (b) the retroactive (to the date of the Union's certification) application of the provisions of any contract negotiated by the parties following enforcement of the refusal-to-bargain order; (3) grievance and arbitration procedure--consisting of the right of the Union, pending the negotiation of a collective bargaining agreement, to grieve and arbitrate all disputes concerning the maintenance of existing practices and working conditions, including the prohibition of unjust discharges and disciplinary action.

The refusal to bargain and other unfair labor practices in this case, together with the tortuously extended representation

proceedings,<sup>1/</sup> were deliberately engaged in by the Company as a stalling tactic in order to undermine employee support for the Union and seriously jeopardize such agreement that may be ultimately obtained. As of the writing of this brief, seventeen months have elapsed since the certification of the Union. By the time all briefs are filed, argument heard, and this Court issues its decision, approximately three years will have elapsed from the date (September 27, 1966) that the Union originally filed its petition for an election.

The remedy requested by the Union seeks to undo the profit and advantage obtained by the Company's successful evasion for nearly three years of its statutory duty to recognize and bargain collectively with the Union. We believe that the compensatory aspects of the requested remedy is totally consistent with the objective of making the employees whole and that the pre-contractual grievance procedure will provide the employees a modicum of effective union representation pending the negotiation of a collective agreement pursuant to the bargaining order. Together with the

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1. This case presents an outstanding example of prolonged litigation to avoid bargaining and to deny employees their right of union representation. Despite an initial consent election agreement, the representation proceedings were thereafter extended over a period of one year, during which the Company filed every conceivable objection, motion, and exception, all of which were ultimately denied by the Board as being either "unmeritorious" or without having presented "material and substantial issues" (Supra at 4-6 ). The same dilatory tactics were engaged in by the Company in the unfair labor practice proceedings, which also consumed a period of one year (Supra at 6-9 ).

informational features of the requested order, these additional remedies are consistent with the restoration of the status quo ante.

In United Steelworkers of America, AFL-CIO (H. K. Porter Company) v. N.L.R.B., 124 U.S. App. D.C. 143, 389 F.2d 295, 302 (1967) this Court had the occasion to consider the adequacy of Board remedies in refusal-to-bargain cases and pointed out:

"...if the Board can do no more than repeatedly order the Company to bargain in good faith the workers' right to bargain collectively may be nullified. The Board is empowered to see that this does not happen."

The Board has likewise recognized the need for remedial relief beyond its standard "cease and desist" and "bargain upon request" orders.<sup>2/</sup>

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2. H. W. Elson Bottling Company, 155 NLRB 714, 715, enforced in part 379 F.2d 223, 226-227 (6th Cir. 1967) [equal time in the case of captive-audience meetings called by an employer]; Scott's Inc., and Int'l Union of Electrical R and M Workers, AFL-CIO, 159 NLRB 1795, 1806-1808 modified and enforced 127 U.S. App. D.C. 303, 383 F.2d 230 [wherein access to bulletin boards and the right of the Union to present its views in captive-audience meetings was granted but reading of notices by the Employer was denied]; J. P. Stevens & Co., 157 NLRB 869, 877-879 enforced 380 F.2d 292 (2d Cir. 1967) [mailing of notices, union access to bulletin boards and meeting of employees required for the reading of notices by the employer]; N.L.R.B. v. Grossinger, Inc., 372 F.2d 26 (2d Cir. 1967) [access by nonemployee organizers to the employer's premises]; N.L.R.B. v. United Aircraft Corp., 324 F.2d 128, 130 (2d Cir. 1963) [mailing of notices and denial of the claimed inviolability of Employer premises for organizational activity]. And for a comprehensive survey of nonconventional remedies, see Flannery, The Need For Creative Orders Under Section 10(c) of the NLRA, 112 U.Pa.L.Rev. 69 (1963).

Thus in H. W. Elson Bottling Company, 155 NLRB 714 (1965), enf'd in part sub nom N.L.R.B. v. Elson Bottling Company, 379 F.2d 223 (6th Cir. 1967), the charging parties request for more than the usual posting of notices and for reasonable access to the employer's bulletin boards was sustained by the Board as follows:

"We find merit in the Union's argument that additional remedies are required to cure the unfair labor practices which occurred here. The Board has a particular duty under Section 10(c) to tailor its remedies to the unfair labor practices which have occurred and thereby effectuate the policies of the Act. Thus, 'depend[ing] upon the circumstances of each case' the Board must 'take measures designed to recreate the conditions and relationships that would have been had there been no unfair labor practices.'"

In the instant case the right to the names and addresses of employees<sup>3/</sup> and the obligation to disclose employee rates, job classifications, and other benefits accrued as of the date the Union was certified. Rockwell Standard Corp., 166 NLRB No. 23 (1967); Shell Oil Co. (Roxana, Ill.), 167 NLRB No. 32 (1968). The refusal to supply such information constitutes an independent refusal-to-bargain violation. E.g., N.L.R.B. v. Boston Herald-Traveler

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3. Remedies which require the union to be furnished with a list of names and addresses of the employees, and to keep the list current for one year, were included as part of the Board's order in J. P. Stevens & Co., Inc., 163 NLRB No. 24 (1967) and Marlene Industries Corporation, 166 NLRB No. 58 (1967). Requiring the employer to provide the union the names and addresses of its employees will not be unduly burdensome. Indeed, such a provision has become a standard aspect of the Board's preelection procedures following Excelsior Underwear, Inc., 156 NLRB 1236 (1966).

Corporation, 210 F.2d 134 (1st Cir. 1954); Vanette Hosiery Mills, 80 NLRB 1116 (1948) enf'd 179 F.2d 504 (5th Cir. 1950). Furthermore, the requested information is essential to the effective implementation of the bargaining order. In view of the Company's consistent avoidance of its statutory duty to recognize and bargain with the Union, the non-inclusion of the requested information in the bargaining order will only provide the Company the opportunity of obtaining further delays because of the necessity to file new unfair labor practices upon the Company's refusal to bargain in good faith by withholding essential information from the Union.

In International Union of Electrical Workers (Scott's Inc.) v. N.L.R.B., 127 U.S. App. D.C. 303, 383 F.2d 230 (1967), enforcing and modifying 159 NLRB 1795, 1806-1808 (1966), this Court approved a remedy which requires reasonable access to an employer's bulletin boards and all places where notices to employees are customarily posted. This opportunity to effectively communicate is also fundamental to the successful negotiation of a collective bargaining agreement and should be included in this case.

While it may be argued that Scott's and Elson fall among the so-called "serious misconduct" cases<sup>4/</sup> it is submitted that

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4. E.g. J. P. Stevens and Co., Inc., 157 NLRB 869, enf'd in substantial part 380 F.2d 292 (2d Cir. 1967), cert. den. 389 U.S. 1005; J. P. Stevens and Co., Inc., 163 NLRB No. 24, enf'd as mod. 388 F.2d 898 (2d Cir. 1967), cert. den. U.S. (1968); J. P. Stevens and Co., Inc., 167 NLRB No. 37, transfer denied 388 F.2d 892 (4th Cir. 1967); J. P. Stevens and Co., Inc., 167 NLRB No. 38 (1967).

remedial differentiation on such ground has been expressly disapproved by this Court. In Local 57, International Ladies Garment Workers Union, AFL-CIO v. N.L.R.B., supra, 347 F.2d at 303, this Court pointed out that employer hostility does not constitute a valid basis for the scope of a remedial order. In pertinent part, this Court stated:

"The Board seeks to distinguish Rapid Bindery from the instant case by arguing that there was no hostility to the union shown in Rapid Bindery, as there is here. We are not told however, in what way the motivation for an unfair labor practice is relevant to a remedy which strikes at workers in order to inflict pain on an employer unless the Board is trying to punish an employer for his unlawful intent. If the Board is suggesting that this remedy is suitable because the Company has been hostile it is making out a case that the order is not remedial but punitive. That is not a valid basis for an order. The Board's attempted distinction also overlooks the fact that Employer animosity towards the union was present in Rapid Bindery although the Court concluded that the record did not support the Board's finding that this was preponderant motive for the move. Finally, there was no hostility to the union in Lewis, supra, where the Ninth Circuit affirmed the remedy. Employer motivation or attitudes towards the union hardly seems to be the touchstone of judicial response."

See also: Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197 (1938); N.L.R.B. v. Seven-Up Bottling Co., 344 U.S. 344 (1953).

While the instant case does not simply involve a "technical" violation of Section 8(a)(5) in that the refusal-to-bargain was exacerbated by the Company's unlawful discharge of the employee-leader of the Union's organizational campaign as well as the Company's unlawful coercion and intimidation of its employees in violation

of Sections 8(a)(1) and 8(a)(3), the scope of the remedy in this case should not depend upon the quantum of the violations but should be predicated upon the necessity to restore the status quo ante by undoing the advantages and profit obtained by the Company as a result of its refusal-to-bargain.

The informational aspects of the remedy requested by the Union is also to maintain and preserve the relationship of the Union vis-a-vis the employees from the date it was certified. The Company's unfair labor practices, which occurred upon the heels of that certification, have thus far prevented the Union from representing the employees for a period of two years. As a result, the confidence that the employees manifested in the Union when they voted for representation has been seriously impaired. Normally, the initial consequences of a union's certification is to consolidate its support by reason of the stake that all employees have in the success of the union's effort to secure a good contract. All employees have an equal and collective stake in the bargaining process, and those employees who voted against the union in the representation election may have been expected to support the Union's effort on their behalf. Here the certification commemorated the beginning of two years of employee isolation from the Union and the complete frustration of the bargaining process whereby wages, hours and working conditions of the employees would have been improved by the Union's bargaining efforts.

This Court is well aware of how futile a bargaining order can be where an employer is determined to defeat the unionization

of its plant as in this case. In United Steelworkers of America, AFL-CIO v. N.L.R.B. supra, 389 F.2d at 301, it was pointed out:

"This Court is cognizant of the fact that the Board's remedial measures have not proved adequate in coping with the recalcitrant employer determined to defeat the effective unionization of his plant by illegally opposing organizational and bargaining efforts every step of the way. As Dr. Ross concluded in his landmark study of duty to bargain cases:

"7. The major shortcoming of the NLRB lies in its failure to adopt adequate and realistic remedies in those cases where the employer has unmistakably demonstrated a continuing intent to frustrate the Act." Ross, Analysis of Administrative Process Under Taft-Hartley, 63 Lab.Rel.Rep. 132, 133 (BNA 1966).

"When the unfair labor practices are committed in localities where hostility to the union movement may run deep, the determined employer who litigates charges often succeeds in ousting the union despite the Board's repeated findings of Section 8(a)(5) violations. And the testimony of witnesses at the recently completed hearings of the House sub-committee on NLRB remedies shows that the refusal to bargain in good faith is frequently the last ditch effort of the employer to undermine the union whose organizational effort he had been unable to frustrate."

In a landmark study by Professor Ross of cases, identical to the one involved here, (Ross, Analysis of Administrative Process Under Taft-Hartley, BNA Labor Relations Yearbook, 1966, pp. 229-302, 63 Lab.Rel.Rep. 132), it was established that the longer collective bargaining is delayed by litigation, the less likely is the signing of a first contract. By reviewing all refusal-to-bargain cases handled by the Board over a five year period, Professor Ross found

that in 86% of all such cases that were closed after a Board order, the parties did not thereafter obtain a contract--the sine qua non of effective collective bargaining.

An abstract of the more pertinent findings and conclusions of the Ross Study are:

"By far, the most significant influence on bargaining consequences was the stage of case disposition. The facts speak for themselves. About two-thirds of cases closed before issuance of complaints resulted in execution of first contracts. This is substantially higher than the results in all the other stages. Even the informal cases which were closed after issuance of complaint did not quite reach this level of contracts achieved.

"With the exception of the handful of cases which required Supreme Court action prior to closing, the longer the litigation the less likely was the prospect of the signing of a first contract. Only about half of all cases closed after a Board order resulted in such contracts and less than 36% of the cases closed after circuit court enforcement ended up with agreements.

"The explanation for these results which comes most readily to mind is the factor of time. The long, drawn out process of administrative investigation, hearing and findings and, ultimately adjudication, bring two, three and four years of delay and a weakening of the charging union through the effects of the unexpunged unfair labor practices upon the employees. Even events unrelated to the unfair labor practices, such as changes in the number and composition of employees, work to the same end.

"That justice delayed may end up in justice denied appears to be confirmed by this relationship of stages of cases closing with bargaining consequences. But this is not all of it. A major finding of this study is that there are fundamental differences between employers who informally adjust their violations of the duty to bargain and those employers who exhaust every legal recourse prior to compliance.

"These differences concern the nature and extent of the unlawful activities engaged in by the employer. On an

average, a litigated case involved more separate violations of the duty to bargain and these were accompanied by far more extensive other unfair labor practices than were adjusted cases. For example, only about 35% of the employers who informally settled their 8(a)(5) violations committed other unfair labor practices. Where court enforcement was necessary, about 69% of the employers had engaged in other violations." 63 Lab.Rel.Rep. at 136 (Emphasis supplied.)

The Ross Study shows that the Board's standard form of relief only provides an incentive for employers to deliberately continue their violation of the Act by engaging in prolonged litigation. Even though such litigation is frequently unsuccessful, the attendant delays so weaken (and sometimes destroy) the union and dampen the employees' previously expressed desire for collective bargaining that the ultimate negotiations prove to be an exercise in futility as proved by the unlikelihood that a contract can or will be consummated.

The Board's order in this case does nothing to dispel the economic loss suffered by the employees; does not attempt to treat with the "free ride" that the Company has thusfar obtained by not having to recognize and deal with the Union; and does not protect the right of the employees to select the Union as their bargaining representative by providing the necessary means of maintaining the effectiveness of the underlying certification. As the Senate Committee Report, accompanying the National Labor Relations Act, put it:

"\* \* \* It seems clear that a guarantee of the right of employees to bargain collectively through representatives of their own choosing is a mere delusion if it is not accompanied by the correlative duty on the part of the other party to recognize such representatives as to have been designated\* \* \*and to negotiate with them in a bona fide effort to arrive at a

collective bargaining agreement. Furthermore, elections to determine the choice of representatives of employees becomes of little worth if after the election its results are for all practical purposes ignored. Experience has proved that neither obedience to the law nor respect for the law is encouraged by holding forth a right unaccompanied by fulfillment.  
\* \* \* S. Rep. No. 573, 74th Cong., 1st Sess. p. 12 (1953)."

It is not enough to make the employees economically whole for the period of time they have been unlawfully deprived of the benefits of collective bargaining, for they must also be afforded with a procedure to effectively redress the resolution of grievances while they have been deprived of union representation and for the period that will be required to negotiate and conclude a collective bargaining agreement.

The requested precontractual grievance and arbitration procedure merely permits the resolution of disputes arising out of violations in the practices that were established by the Company itself. Accordingly, opposition by the Company to such a remedy can only be based upon the "imposition of union representation", to which these employees have been legally entitled since the certification of the Union on August 16, 1967.

In United Steelworkers of America v. N.L.R.B., supra, 389 F.2d at 299-301, this Court properly held that the Section 8(d) qualification (that the Act "does not compel either party to agree to a proposal or require the making of a concession) does not apply to the bargaining of a recalcitrant employer who rejects a checkoff

provision and at the same time admits that he had no business reason for doing so. In this case the refusal of the Company to maintain existing conditions and practices would not only constitute an independent unfair labor practice (Rangaire Corp., 157 NLRB 652 (1966); Stark Ceramics, Inc. v. N.L.R.B., 375 F.2d 202 (6th Cir. 1967); Rental Uniform Service, 167 NLRB No. 25 (1967); Evans Products Co., 160 NLRB No. 141 (1966)) but can only be motivated by the fact of the Union's presence (Great Dane Trailers, Inc., \_\_\_\_ U.S. \_\_\_\_ (1967), 65 LRRM 2465, 2468-9).<sup>5/</sup>

The right to grieve and arbitrate matters such as discharge and discipline need not depend upon whether or not a practice exists, since this right is implicit as the common prevailing practice in nearly all collective bargaining agreements that are currently in force. Certainly, the Union's certification and its exclusive right to represent the employees, may not provide the basis for a Company claim that it has the unrestricted right to discharge employees solely because of the absence of bargaining relationship with the employees at the time of discharge. In Continental Air Transport Co., 38 LA 778, 780 (1962), Judge Norman N. Eiger, in a labor arbitration decision, pointed out:

"The tenor of the United States Supreme Court decisions indicates a liberal interpretation where the issue of arbitrability

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5. The Board has held that the refusal to agree to a grievance procedure amounts to a "formal negation of the collective bargaining principle" United States Gypsum Company, 94 NLRB 112, 115 (1951), modified 206 F.2d 410 (5th Cir. 1953), cert.den., 374 U.S. 912 (1954).

is posed. A perusal of the decisions discloses that unless there is a specific provision excluding a certain grievance from arbitration, or unless there are compelling circumstances which would evince an intention to exclude, the tendency is to encourage arbitration--particularly is this true in so important an area involving the discharge of an employee.

"Discharge is one of the most drastic measures a Company can take against an employee. With his discharge, comes loss of seniority rights, pay and all the benefits secured by the employee under the collective bargaining agreement.

"Although, the instant Contract has no particular provision that an employee shall not be discharged without just cause, nevertheless, it is the considered opinion of the Arbitrator, in the light of overwhelming legal authority and precedent and in this day of enlightened labor--management relations, that such a provision is implicit and inherent in the Contract in question.

"To hold that a Company can capriciously at its sole discretion, without just cause discharge an employee, would in effect nullify the provisions of the Contract entered into by the parties."

To the same effect, see: General Electric Co., 9 LA 757, 762 (Wallen, 1948); Standard Oil Co., 14 LA 516, 517-518 (Platt, 1950); Heliport Corp., 19 LA 619-620 (Warren, 1952); Marco Industries, 27 LA 653, 659-662 (Lynch, 1956) and Interstate Bakeries Corp., 38 LA 1109, 1110-1111 (Frey, 1962). The foregoing cases are representative of the prevailing weight of authority by eminent labor arbitrators that the right to effectively contest unjust discipline is implicit and inherent in all collective bargaining agreements and therefore the protection against unjust discharges, as part of the requested precontractual grievance procedure, may not

be deemed to be an "intrusion on freedom of contract." Cf. United Steelworkers of America AFL-CIO v. N.L.R.B., supra, 389 F.2d at 302.

Recent studies establish that grievance machinery culminating in arbitration are included in 94% of all labor contracts. Freidin, New Collective Bargaining, 50 Va.L.Rev. 1034, 1050-1 (October 1964); Jones & Smith, Management and Labor Appraisals and Criticism of the Arbitration Process, 61 Mich.L.Rev. 1115, n. 1 (1964). In a definitive study by the Department of Labor that was based upon virtually all of the labor contracts in the United States covering 1,000 workers or more, it was found:

"Provision for arbitration of some or all grievance disputes was incorporated in 1,609 (94 percent) of the 1,717 agreements analyzed, covering 96 percent of the workers (table 1). The proportion of agreements providing for grievance arbitration reflects a steady increase in prevalence. In 1944, 1949, and 1952 Bureau studies, arbitration provisions were found in 73, 83 and 89 percent of the agreements, respectively." (Bulletin No. 1425-6, Major Collective Bargaining Agreements-Arbitration Procedures, United States Department of Labor, June 1966 at p. 5.)

The Department of Labor study analyzed the arbitration clause of some 1609 agreements<sup>6/</sup> and only 30 contained any restriction with respect to the resolution of certain types of disciplinary

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6. All agreements are part of the file of current agreements maintained by the Bureau of Labor Statistics in accordance with Section 211 of the Labor Management Relations Act, 1947.

disputes, namely: (a) discharge because of the employees participation in an unauthorized strike; and (b) discharge of short service or probationary employees. Only 4 out of 1,609 (approximately 2/10 of 1%) agreements excluded from arbitration the resolution of disciplinary disputes (Bulletin No. 1425-6, supra at pp. 17-18). Since more than 99% of labor agreements provide for the resolution of disputes concerning discipline and discharge, the remedial request of the Union cannot possibly come within the ambit of Section 8(d).

Even more than the checkoff provision which this Court sustained in United Steelworkers of America, AFL-CIO v. N.L.R.B., supra, 389 F.2d at 302:

"...a provision which is included in 72% of all manufacturing industries labor contracts--is likely to be of life or death import to the fledgling union while it is of no consequence whatever to the employer."

the requested precontractual grievance arbitration procedure is included in 94% of all bargaining contracts and is of life and death import to the Union. If the Union is unable to maintain existing conditions and protect employees from unjust discharges, the order herein will apocryphally certify the demise of the collective bargaining process which the order seeks to initiate as one of the fundamental guarantees of the Act.

As the innovator of the remedial process the Board is obliged to adjust and expand the reach of its bargaining orders to meet dilatory tactics of recalcitrant employers in defiance of their statutory obligation to bargain. The Board has recognized that

effective redress for the commission of a statutory wrong, must not only be tailored to restore the wronged to the position he would have occupied but for the action of the wrongdoer but should also withhold from the wrongdoer the "fruits of its violation." Montgomery Ward & Company v. N.L.R.B., 330 F.2d 889, 894 (6th Cir. 1965).

Just as the Board has had no difficulty in meeting the requirement of an effective order in the case of discriminatorily discharged employees it must likewise tailor its orders in 8(a)(5) cases so that employees may be compensated for the losses they have suffered. In recent years the Board, in awarding back pay to discriminatees, requires not only the return of actual salary lost, but compensation for such items as vacation benefits (Richard W. Kaase Co., 162 NLRB No. 122 (1969)); Christmas and stock bonuses (Stark Ceramics, Inc., 155 NLRB 1258 (1965); United Shoe Machinery Corp., Inc., 96 NLRB 1309 (1951)); shares in a profit sharing program (W. C. Nabors, 134 NLRB 1078 (1961)) and coverage by pension and health insurance plans (Richard W. Kaase Co., supra; Deena Artware Inc., 112 NLRB 371, enf'd 228 F.2d 871 (6th Cir. 1955); Knickerbocker Plastics Co., Inc., 104 NLRB 514, enf'd 218 F.2d 917 (9th Cir. 1955)). Similarly when an employer is found to have unilaterally changed terms and conditions of employment, the Board has generally directed not merely bargaining about these changes, but also requires the restoration of the status quo ante, pending such bargaining. E.g. Fibreboard Paper Products Corp. v. N.L.R.B., 379 U.S. 203, 215-217 (1964); American Fire Apparatus Co., 160 NLRB No. 104, enf'd 380 F.2d 1005 (8th Cir. 1967).

Professor Bok, in his well-known article The Regulation of Campaign Tactics in Representation Elections Under The National Labor Relations Act, 78 Harv.L.Rev. 38, at 127, discusses the appropriateness of applying the back-pay precedent for refusal-to-bargain cases, as follows:

"At the present time, if an employer can succeed in frustrating an organizational drive by firing one or two key employees, he may save much more money in payroll and administrative costs than he will ever be forced to give up as a result of a backpay award. Could the Board attempt to meet this problem by requiring the employer to recompense the Union for the costs of its organizing drive?\*\*\*

"There is no insuperable legal obstacle to remedies of this kind. Since backpay is already awarded to the discharged employees, one might justify additional compensation on similar grounds, not only as a deterrent but as a more realistic and adequate form of redress for the damages actually incurred."  
(Underlining added.)

"Remedies are the life of rights" (Campbell v. Hart, 115 U.S. 620, 631) and as we have shown that the Board's standard cease and desist order in 8(a)(5) cases such as this one, fails to produce a contract in practically all cases where court enforcement is required. (Ross, Analysis of Administrative Process Under Taft-Hartley, supra.) Even where a contract is consummated, the protracted and delaying litigation prior to the enforcement of the bargaining order leaves the union in such a weakened position as to substantially enable the employer to dictate most of the terms and conditions of a contract and thereby the employer secures additional profit from his wrongdoing, which is over and above the withholding

of economic benefits between certification and compliance with a bargaining order. See e.g., Franks Bros. Co., 44 NLRB 898, enf'd sub nom. Franks Bros. Co. v. N.L.R.B., 137 F.2d 989 (1st Cir. 1943), aff'd 321 U.S. 702 (1944).

By making the provisions of the contract retroactive, the Union's requested remedy seeks to minimize the losses that the employees will be required to absorb because of the unlawful dissipation of the Union's bargaining strength. Bargaining should have commenced immediately following the Union's certification. The Company should not be permitted to convert the two year delay in this case into an unfair bargaining advantage. Such a result would provide the Company a premium in the nature of an unjust enrichment (Hartmann v. Gleason, 126 F.2d 946 (6th Cir. 1942)) because of the Company's delayed compliance with its statutory duty to bargain with the Union. Any appropriate remedy contemplates that the employer should not retain the fruits of his unfair labor practice (Beacon Piece Dying and Finishing Co., Inc., 121 NLRB 953, 963 (1958)). (See also NLRB v. Armco Drainage & Metal Products, Inc., 220 F.2d 573 (3rd Cir. 1955) cert.den. 364 U.S. 933; Piasecki Aircraft Corporation v. N.L.R.B., 280 F.2d 575, 591 (3rd Cir. 1960) cert.den. 364 U.S. 33.) To retain profit from the violation has as its corollary the non-restoration of the status quo ante, and as Justice Harlan stated in his concurring opinion in Local 60, United Brotherhood of Carpenters v. N.L.R.B., 365 U.S. 651, 656:

"The primary purpose for other affirmative relief has been to enable the Board to take

measures designed to recreate the condition and relationship that would have been had there been no unfair labor practice."

The flaunting of Board refusal to bargain orders, engaged in by employers such as this Company, has so frustrated congressional policies as embodied in the Act as to have recently induced the Board to engage in a major reassessment of its remedial policies to take the profit out of employer defiance of its traditional cease and desist 8(a)(5) orders. This subject is before the Board in a series of cases: Ex-Cell-O Corp., No. 25-CA-2377 (N.L.R.B. Nov. 18, 1965); Herman Wilson Lumber Co., No. 26-CA-2536 (N.L.R.B. Sept. 6, 1966); and Zinke Foods, Inc., Nos. 30-CA-372, 30-RC-400 (N.L.R.B. April 1, 1966). In Zinke Foods, Inc., supra, the Trial Examiner proposed an order containing the "requirement that Respondent make its employees whole for the loss caused them by Respondent's unfair labor practices, the amount of such loss, if any, to be determined in a supplemental proceeding." In Ex-Cell-O Corp., supra, the Trial Examiner's recommendation included a provision directing the compensation of..."each of its employees for the monetary value of the minimum additional benefits, if any, including wages, which it is reasonable to conclude that the Union would have been able to obtain through collective bargaining with the Respondent commencing with the date of the Respondent's formal refusal to bargain collectively, October 25, 1965, and continuing until paid."

In view of this pendency of a revised remedial policy in Section 8(a)(5) cases and the expressed need for an effective remedy

by two out of the five current Board members (McCulloch, Past, Present and Future Remedies Under Section 8(a)(5) of the National Labor Relations Act; Labor Relations Institute on Current Problems in Collective Bargaining, February 15, 1968, CCH Lab.Law Rep., Par. 8110 at 3771-81; McCulloch, New Remedies Under The National Labor Relations Act, New York University 21st Annual Conference on Labor, CCH Lab.Law Rep., Par. 8122; McCulloch, Remedies For Unfair Labor Practices, 14th Annual Institute of Labor Law of the Southwestern Legal Foundation, CCH Lab.Law Rep., Par. 8100; and Fanning, New and Novel Remedies For Unfair Labor Practices, 5th Annual Labor Relations Institute of Federal Bar Association, Atlanta Chapter, November 21, 1968) it is difficult to understand why the Board in the present case failed even to comment on the Union's remedial requests.

A reviewing court cannot be expected to perform its judicial function intelligently without the benefit of a reasoned analysis by the Board. Cf. Retail Store Employees Union Local 400 v. N.L.R.B., 124 U.S. App. D.C. 1116, 360 F.2d 494, 496 (1965). And here the Board has said nothing, notwithstanding the importance of these issues and that retroactive compensation in 8(a)(5) cases may well become the established measure of relief as a result of its current reassessment of remedies in these three previously cited cases (Ex-Cell-O, Wilson Lumber and Zinke Foods).

The Board's silence in these circumstances constitutes a serious violation of its responsibility under Section 10(c) of the Act to explicate the basis for its decision, which includes the

fashioning of an appropriate remedy for the unfair labor practice charges. Phelps Dodge Corp. v. N.L.R.B., 313 U.S. 177, 191 (1941). See also Burlington Truck Lines v. United States, 371 U.S. 156, 167-169 (1962). Said responsibility was delineated in N.L.R.B. v. Metropolitan Life Insurance Company, 380 U.S. 438, 443, where the Court directed remand because:

"On the other hand, due to the Board's lack of articulated reasons for the decisions in and distinction among these cases, the Board's action here cannot be properly reviewed. When the Board so exercises the discretion given to it by Congress, it must 'disclose the basis of its order' and 'give clear indication that it has exercised the discretion with which Congress has empowered it.' Phelps Dodge Corp. v. National Labor Relations Board, 313 U.S. 177, 197, 61 S.Ct. 845, 854, 85 L.Ed. 1271. See Burlington Truck Lines v. United States, 371 U.S. 156, 167-169, 83 S.Ct. 239, 245-246, 9 L.Ed.2d 207, Interstate Commerce Comm'n v. J-T Transport Co., 368 U.S. 81, 93, 82 S.Ct. 204, 211 7 L.Ed.2d 147."

We view the Board's failure to give any reason for refusing to grant the remedies requested by the Union was an abuse of discretion.

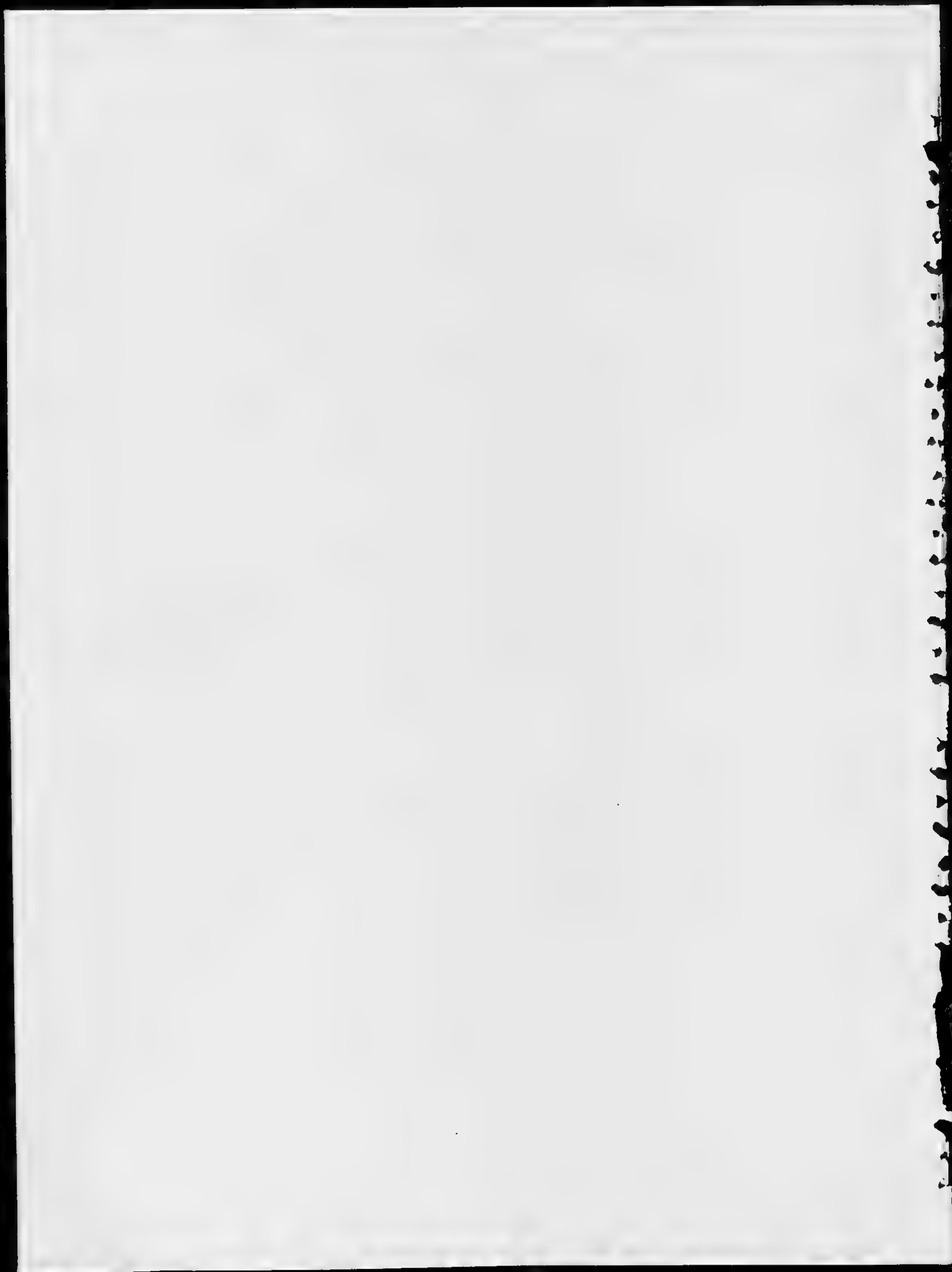
The precise issue presented in this case was previously before this Court in International Union, UAW v. N.L.R.B., \_\_\_ U.S. App. D.C. \_\_\_, 392 F.2d 801 (1967). In that case (which involved a set of facts essentially similar to those here involved), the union requested retroactive compensatory relief which the Board had summarily denied. The Court found it unnecessary to deal with the failure of the Board to explicate the grounds for said denial because the Board asked the Court to remand the case so it could give further consideration to the issue in conjunction with other cases which had

arisen subsequently and which raised the same question. Id at 810. That was over a year ago and there is still no decision from the Board on the issue of compensatory relief for the period that those employees were unlawfully deprived of the benefits of collective bargaining in that case.

Whether or not the Board will make a similar request in this case, we urge the Court to grant a similar remand here. E.g., N.L.R.B. v. Don Juan, Inc., 178 F.2d 625, 627-628 (2d Cir. 1949); United Hatters Cap & Millinery Workers Union v. N.L.R.B., \_\_\_ U.S. App. D.C. \_\_\_, 375 F.2d 325, 327 (1967). However, such remand should not prevent immediate enforcement of the Board's order while it reconsiders its denial of the remedy requested by the Union in this case. Immediate enforcement coupled by a remand was granted in the UAW case (see also International Chemical Workers Union v. N.L.R.B., \_\_\_ U.S. App. D.C. \_\_\_, 395 F.2d 639 (1968)) and should be granted here. This procedure would square with this Court's view on the evaluation of remedies as expressed in International Brotherhood of Operative Porters v. N.L.R.B., 116 U.S. App. D.C. 315, 391, 320 F.2d 757, 761 (1963) where this Court said:

"In the evolution of the law of remedies some things are bound to happen for the 'first time' ...We cannot regard changes in remedial mechanisms as beyond the Board's powers so long as they reasonably effectuate the Congressional policies underlying the statutory scheme."

And in Ex-Cell-O, Wilson Lumber and Zinke Foods, supra, the Board is engaged in a major reassessment of its remedial policies applicable to refusal-to-bargain violations such as the one in this case. Should



new remedies result from said reassessment they should equally apply to this case.

It is submitted that it is totally unnecessary for remand to delay bargaining while the Board considers which of the requested remedies should be granted for the delay which has already occurred.

#### CONCLUSION

For the reasons stated above, the Board's existing Order should be enforced forthwith, but the case should be remanded to the Board for further consideration of whether the additional relief requested by the Union is both appropriate and necessary to compensate the employees for losses they incurred during the period which they were unlawfully deprived of the benefits of collective bargaining and to otherwise restore the status quo, prior to the Company's violations of the Act, so that the existing bargaining Order may be effectual.

Respectfully submitted,

  
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January 27, 1969

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UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 22,181

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE  
WORKERS, AFL-CIO, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent,  
and  
LIBERTY COACH COMPANY, INC., Intervenor.

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No. 22,394

LIBERTY COACH COMPANY, INC., Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent,  
and  
INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE  
WORKERS, AFL-CIO, Intervenor

United States Court of Appeals  
for the District of Columbia Circuit

**FILED** APR 21 1969

On Petition To Review an Order of the  
National Labor Relations Board

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CLERK

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**On Petition To Review an Order of the  
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**BRIEF FOR PETITIONER IN NO. 22,394**

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\*Cases or authorities chiefly relied upon are marked by asterisks.

## STATEMENT OF ISSUES PRESENTED

1. Whether the Company was unlawfully deprived of a hearing on the refusal to bargain charge where the Board refused to direct a hearing on the employer's objections and challenges in the underlying representation proceeding, where the Trial Examiner refused to receive or consider evidence on the validity of the Union's certification and where the Trial Examiner overruled the Company's motion to include in the proceeding the complete record of the representation case.

(a) Whether substantial and material issues of fact existed with respect to the Company's objections and challenges which required the holding of an evidentiary hearing.

(b) Whether the Board erred in refusing to review the entire record of the representation case and whether it could determine if substantial and material issues of fact existed without making such a review.

(c) Whether the Board erred in failing to direct a hearing on the question of the intent of the parties to a stipulation, where it determined that intent by looking at some extrinsic evidence while ignoring other such evidence.

2. Whether procedures followed by the Board in this case were arbitrary and capricious and violative of the Company's right to a fair hearing and to a review of all the evidence.

3. Whether the Board erred in finding that two garage mechanics physically located separate and apart from the Company's Syracuse, Indiana, establishment, were included in the unit.

(a) Whether the Board erred in determining the intent of the parties to the stipulation.

(b) Whether the Board erred in finding that the inclusion of the challenged employees in the unit would not be inappropriate.

4. Whether the Board erred in overruling the Company's objections to the election.

(a) Whether the Board erred in finding that the objections were not substantial enough to have affected the employees' choice.

(b) Whether the Board erred in not investigating the actual effects of the Union's alleged conduct where the election was decided by only two votes.

(c) Whether the Board erred in failing to maintain the secrecy of the election as required by the National Labor Relations Act.

5. Whether the Board erred as a matter of law in denying the Company's motion for reconsideration in the representation case notwithstanding its acceptance as true of all statements of fact contained therein.

6. Whether substantial evidence on the whole record supports the Board's finding that the Company discharged employee Newby in violation of § 8(a)(3) and (1) of the Act where the Trial Examiner had reached the opposite conclusion.

7. Whether substantial evidence on the whole record supports the Board's findings (a) that certain statements to and questions of employees alleged to be in violation of § 8(a)(1) of the Act occurred, and (b) that such conduct constituted interrogation and coercion of employees in violation of § 8(a)(1) of the Act, when the Trial Examiner had reached the opposite conclusion.

(The pending case has not previously been before this Court under the same or any other title.)

### STATEMENT OF THE CASE

Case No. 22,394 is before the Court on the petition of Liberty Coach Company, Inc., (hereinafter referred to as "the Company" or "the Employer") to review and set aside a Decision and Order of the National Labor Relations Board issued on August 1, 1968. Case No. 22,181 is before the Court on the petition of International Union of Electrical, Radio and Machine Workers, AFL-CIO (hereinafter referred to as "the Union") to review the failure of the Board to impose certain remedies which it requested. The Board has cross-petitioned for enforcement of its Order against the Company in Case

No. 22,394. The Board's Decision and Order (J.A. 294)<sup>1</sup> is reported at 172 NLRB No. 154. The Court has jurisdiction of the proceedings under Section 10(e) and (f) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.*) (hereinafter referred to as "the Act").

The Board found that the Company had violated Section 8(a)(1), (3) and (5) of the Act. The Section 8(a)(5) finding (refusal to bargain) was based on the Board's determination that the Union had been validly certified in a prior representation proceeding. Accordingly, the statement of the case will be divided into two sections, one dealing with the representation proceeding and one with the unfair labor practice proceeding.

#### I. THE REPRESENTATION CASE

Pursuant to a stipulation entered into between the Company and the Union, and approved by the Board, an election<sup>2</sup> was conducted among certain employees of the Employer on October 28, 1966, to determine whether those employees wished to be represented by the Union for purposes of collective bargaining. The ballots of two employees were challenged by the Board and the Company and without their votes being counted, the election resulted in a tie-vote of 94 to 94, the Union thus not being entitled to certification. Subsequently, the Union and the Company filed objections to conduct affecting the election and an investigation by the Regional Director as to the challenges and objections followed.

##### A. The Challenges

In their stipulation, the parties had agreed that the election would be held in a unit composed of:

"All production and maintenance employees of the Employer at its Syracuse, Indiana establishment;

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<sup>1</sup>"J.A." refers to the Joint Appendix filed by the parties.

<sup>2</sup>The election, known as a Stipulation for Certification Upon Consent Election, was conducted pursuant to Section 102.62(b) of the NLRB's Rules and Regulations (Series 8) as amended.

BUT EXCLUDING all office clerical employees, all mobile home haulaway truck drivers, guards, and all professional employees and supervisors as defined in the Act."

Immediately prior to the holding of the election a dispute arose as to whether two employees who worked at the Company's garage were intended to be included in the unit, the Company contending that there was no intention to include them and the Union contending the contrary.

The Company is in the business of manufacturing mobile homes, primarily for residential purposes. The mobile homes are built on a single assembly-line in three interconnected buildings located in Syracuse, Indiana (J.A. 20, 316-318).<sup>3</sup> After final construction the homes are moved by tractor to the Company's haulaway area which is separately located about one-half mile away from the main plant. (J.A. 318-319). The Company keeps a substantial number of long distance haulaway trucks there. The mobile homes are hooked up to the haulaway trucks and then transported to their destinations.

The haulaway trucks are serviced and maintained by the two garage employees whose ballots were challenged, Timmons and Kleinknight. These two employees work at the Company's garage which is located outside of Syracuse in the Village of Wawasee, Indiana, about three-quarters of a mile from the Company's plant in Syracuse. (J.A. 320-322, 361). Almost all of their contacts are with the haulaway drivers and contacts with production employees are rare. (J.A. 343-344, 383). Only in the case of some emergency situation will they service any of the plant's mobile equipment. The amount of time spent working on any plant equipment is *de minimis*. (J.A. 356-358, 360-363, 382-385, 453-454; Representation case Exhibit D to Affidavit of E.W. Bechtold, 12-8-66).

The garage employees share the same supervisor with the haulaway drivers and are affiliated with the sales rather than the

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<sup>3</sup>By order of the Court issued on January 16, 1969, the transcript of the Representation Proceeding and other materials submitted by the Company were ordered lodged with the Clerk of the Court. References to pp. 303 *et seq.* of the Joint Appendix are to portions of the Representation case materials.

production department of the Company. (J.A. 315-316, 365, 386-387, 405-406). They work different hours (J.A. 324-335, 385-6), are on a different payroll (J.A. 319-320), and have a different pay scale from production employees. (J.A. 318, 335-336). They punch a separate time clock (J.A. 318), work a different work week (J.A. 336-337) and like the haulaway drivers, do not participate in the production bonus program of the production and maintenance employees (J.A. 335-336).

In addition, Timmons and Kleinknight testified that they ran the garage more or less as an independent operation. (J.A. 381-383, 386). They have little actual supervision (J.A. 338, 364-365, 400), work whatever hours are necessary to get the work done (J.A. 337-338, 353-354) and choose and purchase almost all of the parts and equipment needed on the Company's credit without prior authorization. (J.A. 338-339, 342-346, 348, 354, 358-360, 365-366, 376-378, 391-394, 396-397, 399-400). They also have the responsibility of keeping the inventory and seeing that all of the property located at the garage is safe. (J.A. 346-348, 360-361, 380-381, 387-391, 394-396).

Not having intended the inclusion of Timmons and Kleinknight in the unit defined as those "production and maintenance employees" at the "Syracuse, Indiana establishment," the Company posted no election notices at the garage and it left their names off the eligibility list which it submitted to the Board in mid-October 1966. (J.A. 349-352, 374). Pursuant to the Board's procedure, a copy of this list was sent to the Union more than a week before the election, but it was not until a few minutes prior to the election that the Union raised any question about the exclusion of the two employees from the unit. (J.A. 448-449). The Board Agent challenged their ballots and the Company concurred. After it was decided that Timmons and Kleinknight would be allowed to vote subject to challenge, the Union agent signed the eligibility list.

#### B. The Objections

During the pre-election campaign the Company did not deliver any campaign speeches or distribute any literature to employees.

Supervisors were instructed not to discuss the Union with any employees. The Company took no position with respect to the Union and made no attempts to influence votes. (J.A. 123-4, 177, 311-313, 363, 373, 401-402, 413-414, 417-419, 423-424, 432-433, 444).

The Union, on the other hand, conducted a vigorous campaign, distributing cards, holding meetings and handing out literature. On October 21, 1966, it mailed employees a circular along with a letter from the Union's International representative to the President of the Company. (J.A. 196-198, 309, 442-445). The circular was written over the names of a number of employees, several of whom testified that they did not authorize the material contained therein and that they in fact disagreed with it and were embarrassed by it. (J.A. 372-374, 406-413, 428-430, 443). This literature, among other things, accused the Plant superintendent of manipulating the employees' production bonus, of threatening harsh reprisals against employees if the Union won the election and of using illegal fear tactics to defeat the Union. These same accusations formed the basis of the Union's objections to the election, but the Union was totally unable to produce any evidence in support thereof. (J.A. 171, 174, 177). The evidence did show, however, that rumors concerning such matters were circulating around the plant, although they could in no way be attributed to the Company. (J.A. 177, 379-380, 418, 437-439, 441-442, 443). In addition, the Union's literature asserted that the Union had cards from a majority of employees, and the Union offered waivers of initiation fees for employees who signed authorization cards before the election in such a way that it appeared that employees were required to vote for the Union in order to obtain the waiver. On October 26, 1966, just two days before the election, the Union accused the Company of paying an extra bonus to influence votes. (J.A. 203-204). And in a circular distributed on October 27, 1966, the day before the election, the Union alleged that the Company had been cheating the employees with its bonus system. (J.A. 204-205). Several employees testified, however, that during the prior period the Union had caused a slowdown of the production line and that this action caused the bonus to appear higher during the pre-election period. (J.A. 414-417, 419-421, 424-428, 431-436).

The Company filed objections to the conduct of the Union, alleging that the Union's statements were false and that its misrepresentations and other actions had a substantial impact on the results of the election. The Union also filed objections to the election.

### C. The Board's Disposition of the Challenges and Objections

Pursuant to the N.L.R.B.'s Rules and Regulations, the Regional Director conducted an investigation into the challenges and objections. The investigating attorney and the Company's attorneys reached agreement that a portion of the investigation would be transcribed by a court reporter and submitted to the Regional Director in the form of a transcript of evidence. (J.A. 305-306). It was also agreed that additional matters could be taken down in a similar fashion after the Board attorney had left and submitted to the Regional Director by the Employer. (J.A. 306-309, 355-356, 371, 375). That transcript of evidence and other materials submitted by the Company are to be lodged with the Court pursuant to its order of January 16, 1969.<sup>4</sup>

On the basis of his investigation and his review of the transcript and other materials submitted by the Company the Regional Director issued his Report and Recommendations to the Board (J.A. 169-187). Although he overruled the objections of both the Union and the Company, the Regional Director found that the work and interests of the garage employees were separate and distinct from those of the production and maintenance employees and recommended that they be excluded from the unit and that the challenges to their ballots be sustained.

<sup>4</sup>It should be noted that while this transcript covers most of the issues in dispute, it was no substitute for a hearing and did not develop the evidence as fully as a hearing would have. Moreover, the Board's investigating attorney failed to inquire into several crucial matters requested by the Employer, although he stated on several occasions that he would do so before he left. For example, despite evidence which showed that the slowdown had been caused by employees who were apparently acting for the Union, the Board attorney never did look further into this question. Of course, the Company, by virtue of its position *vis a vis* these employees was unable to ascertain the true facts. And throughout, the Company was required to work under rather stringent time deadlines.

Within the time permitted by the Board's Rules, the Company filed Exceptions to the Regional Director's overruling of its objections and to his failure to find that the garage employees were managerial-security personnel who could not be included in the unit. The Union also filed Exceptions claiming that substantial factual issues existed with respect to the challenges and it called for a hearing. The Union filed a brief along with its Exceptions. The Company shortly thereafter sought to file its brief, but the Board refused to accept it, claiming that it had not been timely filed. (J.A. 210-215).

In its Exceptions, the Company incorporated the extensive evidentiary materials which it had submitted to the Regional Director, including the 1250 page transcript of testimony and various other exhibits, affidavits and correspondence, and requested the Board to review these materials, contending that they supported its objections and its position on the challenges. (J.A. 207-210). The Board refused to review the requested documents and on April 24, 1967, without holding a hearing, it issued a Decision and Order reversing the Regional Director's findings as to the challenges and directing that the challenged ballots be counted. (J.A. 215-218).

On May 1, 1967, the Company filed a Motion for Reconsideration with the Board with accompanying brief asserting that substantial factual issues existed, that it was entitled to a hearing and that a review of the evidence which it submitted would have clearly proven the existence of factual issues. (J.A. 218-235). On May 9, 1967, the Board denied the Company's motion asserting that no material and substantial factual issues had been raised by the Company's contentions. (J.A. 235-236).

#### D. Challenges to Marked Ballots

Pursuant to the Board's Order, the ballots of Timmons and Kleinknight were opened at the Board's offices on May 16, 1967. Both employees had voted for the Union. At that time it was noticed that one envelope had Timmons' name clearly written on the portion that is supposed to be secret and that the other ballot had two corners torn off of it. (J.A. 243-245). The Company filed

challenges to the counting of these ballots on the ground that they were clearly identifiable and thus violated the requirement of secrecy in a Board election. (J.A. 240-242). The Regional Director overruled the challenges and the Board affirmed (J.A. 236-240, 258-261). Consequently, on August 15, 1967, the Union was certified as the collective bargaining representative of the Company's employees.

## II. THE UNFAIR LABOR PRACTICE CASE

### A. The Refusal To Bargain Charge

After receiving its certification the Union requested the Company to bargain. The Company refused in order to test the validity of the certification. On October 24, 1967, the Board charged the Company with unlawfully refusing to bargain with the Union in violation of Section 8(a)(5) of the Act. The Trial Examiner denied the Company's attempts to have introduced into the record of the unfair labor practice case the materials which the Company had submitted to the Regional Director in the representation case, but which the Board had not reviewed. In denying the Company's motion, the Trial Examiner stated that pursuant to Section 9(d) of the Act, the record of the representation case would automatically be certified to the reviewing court once the Board had issued an Order and that the motion was therefore unnecessary. (J.A. 21-22). Holding that he was bound by the Board's determination in the representation case, the Trial Examiner refused to take any additional evidence on the representation issue<sup>5</sup> and found that the Union's certification was valid and that the Company had violated the Act by refusing to bargain with the Union. (J.A. 263). On Exceptions the Board adopted the Trial Examiner's findings. (J.A. 294).

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<sup>5</sup>The transcript of the Unfair Labor Practice Proceeding erroneously fails to contain the Trial Examiner's ruling on this point. See Company's Motion to Find That the Transcript is Patently Erroneous and Unintelligible and Unreliable and to Make the Following Changes in Said Transcript. (J.A. 152). The Trial Examiner accepted all of the Company's changes listed in that motion. (J.A. 262).

### B. The Discriminatory Discharge Charge

On Wednesday, August 30, 1967, a fire in the Company's cabinet shop forced the Company to stop production for a number of days. (J.A. 125-126). President Hussey called the employees together on the day of the fire and told them that he would try to resume production by Friday, but that in any case, they would start production again on Tuesday, the day after Labor Day. (J.A. 29-30, 84-85, 129-130, 138-139). This was a particularly busy time of year for the Company and any failure to meet orders could mean not only the loss of those particular orders but also future orders from dealers whose needs could not be met. (J.A. 28, 124-125, 368, 370). Hussey testified that he and others worked day and night to put the plant in shape for Tuesday morning. (J.A. 30, 128). On Tuesday, every one of the Company's 200 production employees had either reported to work or informed the Company as to the reasons for their absence with the exception of Willis Newby and Amos Yoder. (J.A. 30, 132-133, 141-143).

Several weeks before the fire, President Hussey had given a talk to the employees in which he had emphasized the need for them to call in if they could not come to work for any reason. (J.A. 30, 131-132, 136-137). Several employees received warnings and some were discharged for failure to report in when absent. (J.A. 35-37, 132-133, 161-163). Thus, when Hussey found out that Newby and Yoder had not reported in by about 10:30 a.m., on this most critical day after the fire, he ordered them discharged for their lack of interest in the Company and its future (J.A. 29-30, 130-134, 143). Although Newby was known as a Union supporter, Yoder was not. While it eventually turned out that Yoder had decided to quit on the day of the fire without informing anyone except a few co-workers, and that he had no intention of returning to work with the Company, Hussey and the other supervisory personnel had no knowledge of this until some time after he was ordered fired. (J.A. 86-89, 133, 140).

The Board charged the Company with unlawfully discharging Newby for anti-Union reasons in violation of Section 8(a)(3) of the Act. The Trial Examiner, however, found that Newby had been dis-

charged for good cause and not for any discriminatory reasons and he noted in so doing that "Newby was but one of quite a few active union supporters and that his discharge occurred in a setting free of unfair labor practices other than [the Company's] 'technical' violation of Section 8(a)(5)." (J.A. 266). The Board reversed the Trial Examiner's findings and found that the reason asserted for Newby's discharge was a pretext.

### C. The Unlawful Interrogation and Threats Charges

The Board also charged the Company with three independent Section 8(a)(1) violations alleging that the Company had unlawfully interrogated and threatened employees. In one incident Vice President Harold Weaver allegedly made some inquiry about the Union (although the record does not show what the question asked was) to employee Larry Giengerich, to which Giengerich replied that certain named employees were "on the board on the committee." (J.A. 116). The record is clear that the Company had been furnished with the names of all committee members by the Union (J.A. 146) and that Union activity took place quite openly and without fear at the plant. (J.A. 146, 402-405).

Employee Amos Schrock testified that about September 30, 1967, he approached Superintendent Warren and asked him how he felt about the Union, to which Warren replied that he thought it would be a good thing but that he thought President Hussey would do something to discourage the Union committee and the employees. (J.A. 109-110, 113-114).

Schrock further testified that on November 30, 1967, when he informed Warren that he had an appointment at 3:30 that day, Warren "wondered if it was union or something". When Schrock told him he was going to a meeting of the Union committee, Warren remarked that if he went he would be "the craziest fool that works at Liberty Coach." (J.A. 111). Warren denied making these statements. (J.A. 146-147).

The Trial Examiner concluded that the atmosphere at the Company's plant was completely non-coercive and that the alleged acts

of interrogation would not tend to restrain employees in their support of the Union in such a setting. He similarly found that Warren's alleged statements were not implied threats of economic reprisal and found that the Company had not committed any Section 8(a)(1) violations. The Board, however, reversed the Trial Examiner and found that Weaver's interrogation was unlawful and that Warren's remarks did constitute threats in violation of the Act.

### SUMMARY OF ARGUMENT

The Board's finding that the Company had unlawfully refused to bargain with the Union cannot stand as the Union was not validly certified as the representative of the Company's employees. The stipulation entered into between the Union and the Company restricted the unit to production and maintenance employees at the Company's plant in Syracuse, Indiana. The parties had the intention to exclude the two garage employees whose votes were determinative of the election. These employees were not production and maintenance employees, they did no work at the Syracuse establishment and they had no contacts or interests in common with the production and maintenance employees at the main buildings. The intention to exclude these employees is evident not only from the unambiguous language of the stipulation itself, but also from the surrounding factual circumstances. In addition, inclusion of these employees in the unit would be inappropriate as a matter of law since the evidence submitted showed that they were managerial personnel and that they had no interests in common with the employees in the unit. The Board erred in reversing the Regional Director's finding that these employees did not belong in the unit. The Board interpreted certain changes in wording between the Union's petition and the stipulation in a way that was clearly arbitrary and contrary to established case law and logic. The Board unlawfully went beyond the terms of the stipulation and examined extrinsic evidence to arrive at the intent of the parties, despite the plain meaning of the stipulation; and in doing so, it refused to review all the evidence which had been presented to the Regional Director or to conduct a hearing to resolve the substantial and material issues of fact which were involved, in violation of the Company's right to due process.

The Board also erred in overruling the Company's objections to the election. Those objections alleged conduct on the part of the Union which made a free election impossible. The Company submitted a substantial amount of evidence proving the validity of the objections. The Company's objections, the evidence which it submitted and its Exceptions to the Regional Director's report raised a number of substantial and material factual issues. The Board's denial of a hearing was error. In addition, its refusal to review the evidence submitted by the Company to the Regional Director, contrary to the Board's own rules, violated the Company's right to a review of the whole record and its right to demonstrate that factual issues did exist. The Board further acted arbitrarily in refusing to accept the Company's brief on the ground that it was late, while accepting the Union's, when its published rules were entirely silent on the question of the time for the filing of such briefs.

When the ballots of the two challenged employees were counted, they were both clearly identifiable due to apparently intentional markings placed on one ballot and the envelope of the other. The Board erred in not declaring these ballots void.

The Board erred in reversing the Trial Examiner's finding that the Company had no anti-union motive in discharging Willis Newby. The Trial Examiner's decision was based on his evaluation of the credibility and demeanor of the witnesses and his determination as to motivation must be given great weight. The record shows that the Company had good cause for Newby's discharge, that it was in conformity with the Company's known rules, and that the Company had shown no evidence of hostility toward the Union. The record further shows that Union activity was conducted openly at the plant, that many employees were known to be active in Union affairs, and that no actions had ever been taken against any employees in the 12 or 13 months during which the Union had been on the scene. The Union had been certified by the Board. The Company had remained completely out of the election campaign, when if it had sought to defeat the Union it might have taken some action. It had no reason to take any steps against unionization when the only question was one that had to be resolved by the courts; i.e., whether the Union had been validly certified. There

was no substantial evidence to show that the Company had any anti-union motivation in discharging Newby.

Similarly, the Board erred in finding that three isolated alleged instances of interrogation violated the Act. Any comments that might have been made were, as found by the Trial Examiner, entirely non-coercive when the overall conduct of the Company is considered. In discussing these incidents the Board substantially distorted the record. There was no substantial evidence to show that the Company had violated the Act.

### ARGUMENT

**I. THE BOARD ERRED IN DENYING THE COMPANY A HEARING, IN REFUSING TO REVIEW THE ENTIRE REPRESENTATION CASE RECORD, AND IN ENGAGING IN OTHER PROCEDURES WHICH PREVENTED IT FROM FULFILLING ITS ADMINISTRATIVE DUTY IN THIS CASE.**

Throughout the proceedings in this case, the Company has been denied its right to a hearing and its right to present its evidence on the representation case issues. The Board refused to grant the Company a hearing on factual issues which were raised and it refused to review the substantial volume of evidentiary materials which the Company had submitted to the Regional Director, despite the clear requirements of its own rules. These actions by the Board violated the Company's right to due process of law and its right to be heard.

The material which has been lodged with the Court pursuant to its Order of January 16, 1969, although constituting the only record of any substance before the Court on the representation issues, can be no substitute for the record that could have been made at a full evidentiary hearing. The transcript of testimony which the Company submitted to the Regional Director was made without the presence of a hearing officer, without the right of subpoena or cross examination and without the dignified atmosphere normally associated with a formal hearing. Despite these defects, however, this material constituted the only factual evidence in the case available to the Board. The Board should have reviewed

it and on the basis of the substantial and material factual issues raised therein ordered a hearing before issuing a decision in the case. It was this material itself which contained the factual issues requiring a hearing.

There is no dispute that the Board has a duty to hold a hearing on substantial issues of fact. (NLRB Rules and Regulations (Series 8) as amended, § 102.69(e)). Implicit in this duty is, of course, the duty to determine the existence of such issues of fact. The existence of those issues is thus a matter for determination itself, and consequently a primary responsibility of the Board, reviewable by the courts. However, the Board would seek to prevent judicial review of that determination by imposing its own interpretation of the scope of the Company's Exceptions upon the Court.

The Board in its Opposition to the Company's Motion to Supplement the Record herein seeks to prevent Court review of the investigative record by asserting that the Company's Exceptions were somehow inadequate and did not properly raise "substantial and material factual issues." Yet nowhere in the Board's Rules are there to be found any requirements as to the form of exceptions or objections or the manner in which factual issues are to be raised. Here the Company's Exceptions incorporated its contentions raised below and the evidentiary materials submitted to the Regional Director as a means of raising such issues. The Board at no time determined that the Company's initial Exceptions were improper in incorporating its contentions, objections, challenges, and material in amplification thereof which had been submitted to the Regional Director. Rather, the Board ignored this aspect of the Exceptions and, once doing so, went even farther afield by indicating in its Opposition to the Company's Motion some failure of the Company to make a proffer of proof in the course of its Exceptions. To view the Company's Exceptions properly, it must be acknowledged that the Company more than proffered proof in the ordinary sense. It specifically incorporated its submittals involving its objections, its challenges, its contentions and amplifications thereof and the evidence in support thereof, within its Exceptions. This procedure of incorporation, by all rules of construction, made those materials a part of the Company's Exceptions.

The Company submits that the Board nowhere in its rules prohibits such a procedure. Further, the Company did not incorporate extrinsic material inaccessible to the Board for review. Instead, it incorporated within its Exceptions material that through great effort of the Company had left its physical possession and control and was in the physical control and custody of the Board through the Regional Director. By this incorporation by reference these materials, and especially the contentions therein, the objections, the challenges and amplifications thereof, constituted an integral part of the Company's Exceptions.

The Board before this Court has asserted that the Company's Exceptions had to state the specific findings in the Regional Director's Report that were controverted. That Report, however, did not itself set forth specific fact findings but merely the conclusions which the Regional Director had drawn from his investigation and these were controverted by the Exceptions. The gist of the Regional Director's Report was that the evidence presented did not support the Company's objections. Without question, the Exceptions put this conclusion into issue. Clearly in order for the Board to determine if the evidence supported the objections it had to review that evidence. Moreover, the Regional Director failed to quote fully from the objections filed by the Company or to attach them to his report, even though the Board's Rules (§ 102.69(f)) specifically provide that the objections constitute a part of the record to be transferred to the Board.

In its Exceptions to the Regional Director's Report, the Company set forth its contention that the Regional Director's findings as to its objections were incorrect and that the evidence which it had submitted fully supported its position as presented in those objections. Basically, the Company's position was that the extensive transcript of testimony and other materials which it had filed showed the legitimacy of its objections in every particular and that each of the Regional Director's findings with respect thereto were controverted.

In addition, even without incorporation, the Company set forth a number of specific factual matters in dispute, such as whether the

Company had time to rebut the Union's misrepresentations and accusations in light of surrounding circumstances, whether untrue harshly-worded accusations in Union literature had been issued over employees' names without their authorization or consent and whether two challenged employees constituted managerial and security personnel who could not be included in the bargaining unit.

The Company in its Exceptions also drew into issue the Regional Director's conclusion that the Union's literature was not objectionable on its face, contending that the record which it had made would show that the literature was objectionable, that it was grossly untrue, that it was deliberately written with the purpose of unlawfully influencing the election and that it in fact did so. The Exceptions further pointed out that the literature had falsely accused the Company of using its substantial incentive bonus system to manipulate pay and to affect the election, the type of accusations involving economic matters which *Hollywood Ceramics Company, Inc.*, 140 NLRB 221 (1962), stated was of the utmost concern to employees. Indeed, the rule of *Hollywood Ceramics*—that an election will be set aside upon a showing that there had been a misrepresentation involving a substantial departure from the truth at a time which prohibits the making of an effective reply so that the misrepresentation may be expected to have had a significant impact—would seem to require a consideration of surrounding circumstances and factual matters outside the four corners of the literature itself.

Unquestionably, the Company had set forth numerous factual issues in conflict with the Regional Director's findings. And in order to show that its contentions were supported by evidence, it relied on the materials which it had submitted to the Regional Director, incorporating them by reference and requesting the Board to review them.

The Board in response to the Company's Motion to Supplement the Record asserted that the Company's Exceptions were rejected, not because they were inadequately supported, but on the ground that, accepted as true, they raised no material factual issues. Aside from the fact that the Board's initial Decision on objections and challenges merely adopted the Regional Director's report

without stating the reasons therefor,<sup>6</sup> a decision based on such a rationale would patently be an arbitrary one. For then we would have the Board holding, despite well-founded and long-settled rules of National labor policy, that material misrepresentations and accusations of wrongdoing concerning economic as well as other matters did not have any effect on the election, even though no effective reply could be made thereto; that a union could cause a slowdown of the employer's production line before an election and then accuse the employer of rigging the bonus system without affecting the laboratory conditions which are supposed to prevail; that employees' names could be placed on harshly-worded union literature without permission and have no effect on the election; that an employee could be a managerial employee or a guard (when guards are specifically excluded) and still be included in the unit; and so on.

Clearly, the Board's rejection of the Employer's Exceptions was based, not on the fact that it had not raised any factual issues, but that it had not shown specifically what evidence would support its contentions. But the Company had made an offer of proof, as required, by incorporating the evidentiary material which it had submitted to the Regional Director in its Exceptions and by requesting the Board to review it. Unlike the proffers contemplated by *NLRB v. Tennessee Packers, Inc., Frosty Morn Division*, 379 F.2d 172 (6th Cir. 1967), this evidence was in the form of sworn testimony taken before a court reporter—not just a statement by the party that he would prove certain facts if a hearing were granted—but rather the sworn testimony of witnesses as to what did transpire. And this material was wholly within the control and possession of the Board—available at any time for it to review and inspect. Such an inspection could easily and with minimal inconvenience have demonstrated to the Board whether the Company's assertions were supported by enough evidence to require a hearing.

The Board would require that the Exceptions set forth with detailed specificity all allegations of dispute with the Regional Direc-

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<sup>6</sup>The Board's denial of the Company's Motion for Reconsideration did state that the Board accepted the Company's factual contentions in its Motion and brief (but not its Exceptions or objections) as being true, but found no material or substantial issue therein.

tor's Report before such Exceptions could be deemed to raise substantial issues of fact. Despite the Board's assertion, its Rules do not require such specificity but merely state that the Exceptions must "raise" substantial and material issues of fact in order for a hearing to be required. Surely the Company, by setting forth many specific allegations of error and by further asserting that the evidence it had presented supported facts contrary to ultimate conclusions found by the Regional Director met the requirements of the Board's Rules and of *NLRB v. Tennessee Packers, Inc.*, *supra*, at 178, that "it define its disagreements and make an offer of proof to support findings contrary to those of the Regional Director."

The right to a hearing when there are substantial issues of fact is not merely a right which derives from the Board's Rules and Regulations. It is also a right under the due process clause of the Constitution. *NLRB v. Bata Shoe Co., Inc.*, 377 F.2d 821 (4th Cir. 1967), cert. denied, 389 U.S. 917 (1967). If there are issues of fact presented in the objections or challenges to the election and there is evidence which would support them, a hearing must be held at some stage of the administrative proceeding before the objecting party's rights can be affected by an enforcement order. *NLRB v. Union Brothers, Inc.*, 403 F.2d 883 (4th Cir. 1968); *NLRB v. Smith Industries, Inc.*, 403 F.2d 889 (5th Cir. 1968); *Howell Refining Co. v. NLRB*, 400 F.2d 213 (5th Cir. 1968); *NLRB v. Bata Shoe Co., Inc.*, *supra*. Even if the Company's Exceptions were defective in some respects, this could not deprive it of its basic right to present evidence and have a hearing if in fact material issues were present. The Board itself admits (p. 3 of its Opposition to the Company's Motion to Supplement the Record) that it will grant a hearing "only if it appears that *the objections* raise 'substantial and material factual issues.'" [emphasis added]. The Exceptions merely serve to demonstrate that there is disagreement with the Regional Director and that the objector's contentions can be supported by evidence.

In *Sonoco Products Co. v. NLRB*, 399 F.2d 835 (9th Cir. 1968), the Court specifically dealt with the question of whether the submission of evidence to the Regional Director would be sufficient to raise an issue of fact despite the party's failure to make detailed offers of proof, and stated:

"... [A]lthough the Board's agents may discover evidence suggesting one result, that does not mean, when an employer . . . has presented evidence to the contrary that there is no 'substantial and material factual issue.'

"We need not decide whether or not a detailed offer of proof will suffice to raise such an issue. Cf. *NLRB v. Tennessee Packers, Inc.* . . . For here, the petitioner has by the presentation of *evidence* met its burden of 'clearly demonstrat[ing] that [a] factual issue exist[s] which can only be resolved by an evidentiary hearing.' *NLRB v. Tennessee Packers, Inc.* . . ." [Emphasis, the Court's.] 399 F.2d at 841.

In order for the Board to determine whether the Company here had met its burden, it had to review the evidence presented. In order for the Court to properly review the Board's actions, it must review that evidence. As stated by the Fourth Circuit in *Bata Shoe, supra*:

"... [I]n order to be entitled to a hearing on its objections to an election the objecting party must make a *proffer of evidence* 'which *prima facie* would warrant setting aside the election.' [Citations omitted] The determination, however, of whether substantial and material factual issues have been raised so as to necessitate a hearing is a question of law and *ultimately a question for the courts.*

\* \* \*

"... [W]e believe the Company's *objections* to the election and exceptions to the report of the Regional Director raised material and substantial factual issues which entitled it to a hearing." [Emphasis added.] 377 F.2d at 826.

This is not a case where a party has filed broad Exceptions to the Regional Director's findings without any support merely to delay the proceedings. This was a case where the party had genuine grievement and supported its contentions with materials perhaps more thorough and extensive than any ever before presented to the Board.

In addition to the issues presented in the Company's objections, there is the question of the challenges to the ballots of two

employees. On the basis of the Company's evidence, the Regional Director found that these employees had no community of interest with the others, and sustained the challenges to their ballots. The Union filed Exceptions to the Regional Director's report in which it claimed that substantial factual issues existed with respect to his findings on the challenges, and that a hearing was required. The Company, of course, having received a favorable decision in this regard, was not required to and did not except to the Regional Director's findings as to the challenged employees, except for his failure to find them to be managerial-security personnel. Despite the fact that all of the Regional Director's findings favored the exclusion of these employees from the unit, the Board reversed the Regional Director and made factual determinations as to the intent of the parties, the community of interest of the employees and the appropriateness of the unit without either holding a hearing or reviewing Liberty's proffered evidence. Surely (even by the Union's own assertion) the Regional Director's findings could be reversed only upon a finding that substantial issues of fact existed requiring the holding of a hearing. At the very least, the Board was required to review Liberty's evidence to ascertain if the Regional Director's findings were supported before accepting the Union's assertions. Now the Board has asked this Court to sanction the Board's conduct by precluding this Court from seeing the evidence upon which the Regional Director made his findings which were adverse to the Board's.

The Board contends that this Court cannot review evidence which it has not itself considered. The fact that the Board did not consider the materials can be no defense if it *should have* done so but chose not to. In *NLRB v. Ideal Laundry and Dry Cleaning*, 330 F.2d 712 (10th Cir. 1964), the Court, faced with a similar issue, admitted into the record before it various affidavits, testimony and documents which the employer had unsuccessfully sought to be made a part of the record before the Board. The Court first stated that generally it will:

"... examine the entire record to determine: (1) whether the aggrieved party was accorded a fair hearing; and, (2) whether the Board applied the

proper legal criterion in determining the eligibility of the challenged ballots." 330 F.2d at 715.

And it went on to state that:

"Due process demands that either party be permitted to produce additional proof deemed material to the vital issue of appropriateness, if was not a part of the record in the representation proceedings, and for some reason was unavailable for consideration by the Board in its decision therein." 330 F.2d at 716.

In admitting the proffered materials into the record before it, the Tenth Circuit concluded:

"While the Board may, in the exercise of its administrative discretion, deny an opportunity for hearing in the representation proceedings on evidence elicited by a post-election investigation, respondent is entitled to produce in this unfair labor practice proceedings any additional, relevant evidence bearing upon the critical issue. . . . All of this proffered evidence having been rejected as immaterial stands as admitted for purposes of review. We will thus examine the entire record, including the pre-election testimony and all proffered evidence, to determine whether the Board's § 8(a)(5) and (1) Order can be supported by substantial evidence."<sup>7</sup> Ibid.

Similarly, the material which the Company submitted to the Regional Director and which is now lodged with this Court should be made a part of the record on review before this Court. When the Company sought to make these materials part of the record in the unfair labor practice proceeding, the Trial Examiner denied the motion on the explicit ground that the motion was not necessary since the materials would automatically be certified to the Court for review. (J.A. 21-22). Nevertheless, the Board has steadfastly refused to certify these documents to the Court and it has vigorously

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<sup>7</sup>The Company sought to have the requested materials made a part of the record before the Trial Examiner in the unfair labor practice proceeding below, but its request was denied, as well as its right to produce evidence therein bearing on the representation case.

opposed the Company's Motion to Supplement the Record before this Court. Surely the Board cannot be permitted to maintain the position that, on the one hand, the documents need not be included in the record before it because they would be included in the record on review before the Court, and, on the other hand, that they cannot be reviewed by the Court because they were not part of the record before the Board. Such duplicity is certainly an abuse of the functions of an administrative body.

The Board argued in its opposition that the only effect the Company's request can have is that the "Court could find that the Board had erred in denying the hearing and remand the case for appropriate proceedings." While the Company believes the evidence should lead to a decision in its favor on the merits, it has been contending all along that it has been denied its right to a hearing. Accordingly, pursuant to § 10(e) of the Act, 29 U.S.C. § 160(e), the Company suggests that an appropriate disposition of this case would be a remand to the Board to take, examine and make findings on the additional evidence which the Company was unable to get before the Board previously.

The Board has also made the point that the procedure of review suggested by the Company would hamper the processing of representation cases and that its practice of refusing to review such materials is of long standing. Arguments such as these should carry little weight against the claim that a party's basic right to be heard has been denied. The Court in *NLRB v. Smith Industries, Inc.*, *supra*, at 895, adequately summed up the answer to such contentions:

"While we are fully cognizant of the statutory and administrative policy in favor of expeditiously processing objections to representation elections in order to facilitate collective bargaining, *NLRB v. Zelrich Company*, 5 Cir., 1965, 344 F.2d 1011, 1015, 'this policy cannot operate to deprive the employer of a hearing in circumstances where it is entitled thereto.' *United States Rubber Co. v. NLRB*, 5 Cir., 1967, 373 F.2d 602, 607.

"While the consideration of whether an administrative body must give notice and an opportunity

to be heard to interested individuals frequently involves difficulties of statutory interpretation, the ultimate legal problem is whether the procedure utilized satisfies the guarantee of due process of law.' [Citation omitted]"

Certainly the short time it would have taken the Board to ascertain whether issues of fact had been presented and whether the Regional Director's findings were supported would have been a slight inconvenience compared to the substantial wrong done to the Company by the Board's failure to do so. "Arguments that tribunals are too busy to do their duty . . . or that it is more expeditious not to recognize rights are not agreeable ones." *NLRB v. Trancoa Chemical Corporation*, 303 F.2d 456, 461-2 (1st Cir. 1962).

The Board's own Rules and Regulations specifically provide for Board review of such materials. Section 102.69(e) of the Board's Rules provides that if no hearing is held the Board is to decide the matter "upon the record." "The record" is then defined in § 102.69(f) as, among other things, "documentary evidence, together with the objections to the conduct of the election or conduct affecting the results of the election, any report on such objections, any report on challenged ballots, exceptions to any such report, any *briefs or other documents submitted by the Parties*, the decision of the Regional Director, if any, and the record previously described in Section 102.68. . . ." [Emphasis added.] Section 102.68 provides similarly that "The record in the proceeding shall consist of . . . stipulations, exhibits, documentary evidence . . . and any *briefs or other documents submitted by the parties to the Regional Director or to the Board*. . . ." [Emphasis added.] And to prevent any ambiguity from arising as to the disposition of the record so clearly defined, Rule 102.69(f) continues, "Immediately upon issuance of a report on objections or challenges, or both . . . the Regional Director shall transmit the record to the Board."

The Board has contended that its Rules do not mean what they say—that "documents" mean "documents in the nature of briefs"; and that "documentary evidence" means "documentary evidence introduced at such hearing." Certainly this is a most tortured and distorted reading of the Rules. While the Company will concede

that the phrase "documentary evidence" might appear to mean such evidence in the context of a hearing (although the Rules do not so state), the words "other documents" clearly encompass exactly the type of materials which the Company sought to have the Board review. There is no support whatsoever for the contention that such "documents" are restricted to those containing "supporting arguments." On the contrary "documents" is a word most commonly used to refer to evidentiary materials such as those submitted here. That the Board has never so interpreted its Rules is no defense if parties can and do rely thereon to their detriment. Clearly, in framing its Exceptions in terms of these documents, the Company expected the Board to review them pursuant to its own Rules and the rule of reasonableness.

But whatever the Board's Rules might say—even if they were silent on the issue—the requested materials would have to be made part of the record. To do otherwise would be to deny a party an opportunity to be heard and to present evidence on essential factual matters throughout the proceedings and to effectively prevent review of those proceedings. The Company has been found guilty of an unfair labor practice charge. Yet it not only was never provided with a hearing on essential factual matters at any stage of the proceeding, but the very evidence which it contends would show its right to a hearing has effectively been barred from review by the Board, the Trial Examiner and only now is before this Court.

In view of the foregoing, much of the argument hereinafter is directed to demonstrate the many substantial, material and relevant factual issues and questions presented which required a hearing.

In addition to the denial of a hearing and the failure to review the record of the investigation by the Board, other procedures of the Board are pertinent at this point and demonstrate the arbitrariness of its handling of this case. An example is the action of the Board in refusing to accept the Employer's brief in support of its Exceptions which was filed by the Employer within 19 days of its Exceptions and within 30 days of the Regional Director's report. The action of the Board refusing the Employer's brief was taken after the Board had accepted the Union's brief in support of its

Exceptions. The Board's excuse for the rejection of the Company's brief was that it had an unwritten unpublished rule that briefs would not be accepted after the date for the filing of exceptions which are due 10 days after the Regional Director's decision is issued. Courts and administrative agencies can speak only through their published orders and rules. Here in the absence of an express time limit for the filing of briefs the Employer should have been permitted a reasonable time to submit its brief. Certainly thirty days is within the rule of reason. To permit the Union's brief to be filed while denying the same opportunity to the Company was a clear abuse of the Board's discretion. It is worthy of note that shortly after this incident, the Board amended its published rules to specify a time limit for the filing of briefs in support of exceptions. NLRB Rules and Regulations (Series 8) as amended, § 102.69(c), 32 FR 9549 (July 1, 1967).

## **II. THE BOARD ERRED IN OVERRULING THE CHALLENGES TO THE TWO GARAGE EMPLOYEES**

The Union and the Company entered into a stipulation which clearly and unambiguously provided for a unit which did not include the garage employees. This stipulation expressed the intent of the parties not to include these employees in the unit and extrinsic evidence as well as the stipulation itself demonstrated this fact. Only by holding a hearing could the Board consider any extrinsic evidence showing a contrary intent. The garage employees could not appropriately be included in a unit with production and maintenance employees because there was no community of interest between them and because the garage employees were shown to be managerial, confidential and security personnel. Moreover, their ballots were void, regardless of unit considerations because the ballots were clearly identifiable and violated the rule requiring Board elections to be held in secrecy.

**A. The Record Demonstrates That the Parties Intended To Exclude These Employees from the Stipulated Bargaining Unit**

**1. *The Stipulation Itself***

The Board's Decision, finding that the Employer had unlawfully refused to bargain with the Union in violation of Section 8(a)(5) of the Act, rests upon the validity of the Union's certification in the representation proceeding. If the certification is found to be invalid, the unfair labor practice finding cannot stand.

The original tally of ballots showed that both the Union and the Employer had received 94 votes with the votes of the two garage employees being challenged by the Board and the Employer. The Regional Director found that the challenges should be sustained and recommended that no certification of the Union should issue. Upon Exceptions filed by the Union, the Board, without holding a hearing and without reviewing the evidence submitted to the Regional Director, reversed the Regional Director's decision and ruled that the two garage employees should be included in the unit and that the challenged ballots should be opened and counted. A recount of the votes, including those of the garage employees, showed that the Union had received 96 votes and the Company 94. The Company thereupon filed new challenges and objections to the election. Accordingly, the correctness of the Board's overruling of the challenges is of crucial importance to the determination of this case.

The representation election was conducted pursuant to Section 102.62(b) of the National Labor Relations Board's Rules and Regulations (Series 8) as amended. This type of election is known as a Stipulation for Certification Upon Consent Election and is designed to allow the parties to waive a pre-election hearing by stipulating as to the issues which would normally be resolved in such a hearing, but it does not waive the parties' right to a post-election hearing on objections or challenges. One of the questions resolved by the parties was the composition of the unit in which the election was to be conducted.

The Union and the Employer agreed, with the Board's approval, that the stipulated unit was to be made up of:

"All production and maintenance employees of the Employer at its Syracuse, Indiana establishment; *BUT EXCLUDING* all office clerical employees, all mobile home haulaway truckdrivers, guards, and all professional employees and supervisors as defined in the Act."

It is well settled that when the parties to an NLRB representation proceeding enter into a stipulation as to the composition of the unit appropriate for collective bargaining purposes, they are bound by that stipulation and the Board itself may not alter the unit agreed upon unless the composition of the unit would run counter to well defined principles of National labor policy. *NLRB v. Tennessee Packers, Inc., Frosty Morn Division, supra*; *NLRB v. Midwest Television, Inc., Station WMBD-AM-FM-TV*, 370 F.2d 287 (7th Cir. 1966); *NLRB v. Schapiro and Whitehouse, Inc.*, 356 F.2d 675 (4th Cir. 1966); *NLRB v. United Dairies*, 337 F.2d 283 (10th Cir. 1964); *NLRB v. J.J. Collins' Sons, Inc.*, 332 F.2d 523 (7th Cir. 1964); *NLRB Joclin Manufacturing Company*, 314 F.2d 627 (2nd Cir. 1963); *Shoreline Enterprises of America, Inc. v. NLRB*, 262 F.2d 933 (5th Cir. 1959). The essential question in determining whether employees are to be included or excluded from the unit is the intent of the parties to the stipulation. *NLRB v. Tennessee Packers, supra*; *NLRB v. Midwest Television, supra*; *NLRB v. Joclin Manufacturing Company, supra*. While the oft-proclaimed expertise of the NLRB in fashioning units appropriate for collective bargaining is subject to only limited judicial review, such expertise does not come into play at all when the function of the Board is merely to determine whether or not the parties *intended* the inclusion of certain employees in the unit. *NLRB v. Joclin Manufacturing Company, supra*; *NLRB v. J. J. Collins' Sons, Inc., supra*. In such circumstances, the reviewing court is just as qualified as the Board to ascertain the parties' intent.

The stipulation entered into between the parties here by its express wording was clearly and unambiguously intended to exclude the garage employees from its coverage. The unit was limited pre-

cisely and geographically to employees at the Employer's Syracuse, Indiana, establishment. Except for occasional emergencies, the garage employees perform their duties exclusively at the garage in the village of Wawasee, Indiana, which is located separate and apart from the Employer's production establishment in Syracuse and which is, in fact, some distance away. All of the Employer's other employees, with the exception of the haulaway truck drivers, who were also excluded from the unit, are located in the manufacturing complex in Syracuse. The unit was further restricted to "production and maintenance" employees. All of the employees at the Syracuse buildings are directly involved with the production function of the Employer's business, while the haulaway truck drivers and the garage employees are involved with the question of transporting the Employer's finished product to customers after production has been completed. Clearly, therefore, by restricting the stipulation to production and maintenance employees at the Syracuse establishment, the parties demonstrated their intent to exclude the garage employees.

Geographic restrictions in a stipulated unit must be observed. *NLRB v. Tennessee Packers, supra*. In that case the Court stated that similar language to that found in the stipulation here was "unambiguous in setting up a geographical limitation on the appropriate bargaining unit." 379 F.2d at 182. The stipulation in that case limited the unit to employees "at Tennessee Packers, Inc., Clarksville, Tennessee Plant" and a question arose as to several employees who performed their duties outside of Clarksville. The Court held that these employees were not intended to be included in the unit by the parties and stated that if such had been their intent, it would have been easy to word the stipulation accordingly. Likewise, if the Union and the Employer here had intended for the two garage operators to be included in the unit, there would have been no need for the geographical limitation, since all of the Employer's employees, except the garage operators, were located in Syracuse. By limiting the unit to Syracuse employees, the garage operators were thus specifically excluded.

Moreover, contrary to the Board's finding, the use of the word "establishment" further demonstrates the parties' intention to

exclude the garage employees from the unit. That word has a well defined meaning and usage in business, government, and law, as set forth in some detail by the Supreme Court in *A. H. Phillips, Inc. v. Walling*, 324 U.S. 490, 496 (1945). There the Court defined "establishment" as meaning "a distinct physical place of business." That definition has been widely accepted, and it has been said to be used to indicate "a distinct physical place of business as opposed to an entire business or enterprise which may include several separate places of business." *Stevens v. Welcome Wagon International, Inc.*, 390 F.2d 75, 78 (3rd Cir. 1968). And in *Mitchell v. Birkett*, 286 F.2d 474 (8th Cir. 1961), the Court stated that common ownership and close functional and economic relationships between physically separated units of a business are not sufficient to make such combined units a single "establishment." See also *Mitchell v. Bekins Van & Storage Co.*, 352 U.S. 1027 (1957), rev'ing 231 F.2d 25 (9th Cir. 1956); *Acme Car & Truck Rentals, Inc. v. Hooper*, 331 F.2d 442 (5th Cir. 1964); *McComb v. Wyandotte Furniture Co.*, 169 F.2d 766 (8th Cir. 1948).

As the Regional Director found (J.A. 186), the garage is "a separately located and distinct operation from the plant." The use of the word "establishment" in defining the Syracuse, Indiana, portion of the Employer's business is clear evidence of the parties' intent to narrow the unit to that physically distinct location and to exclude the separately-located garage. The use of the word "plant" rather than "establishment" would have been considerably more ambiguous and would not have had the benefit of the extensive judicial examination received by the latter term.

The stipulation specifically excluded mobile home haulaway drivers. As the garage employees spend virtually all of their time (J.A. 185-186) working on the haulaway drivers' equipment, and as the mechanics and the drivers are the only non-production related employees and the only ones not located at the manufacturing buildings, the exclusion of the drivers is another strong indication of the parties' intent to also exclude the garage employees by means of the geographic limitation.

As we have shown, the stipulation was written in clear and specific language restricting the unit to a certain type of employee at a

particular geographic location. This language could be interpreted to include other employees not within the defined limits only by stretching and distorting it beyond recognition. The Board could not, without looking outside the four corners of the stipulation, lawfully arrive at a conclusion that the garage employees were intended to be included within its terms. But it lacked the power to go beyond those four corners.

In *NLRB v. Tennessee Packers*, *supra*, the Court stated that "The Board will consider matters of practical significance only if the stipulation is ambiguous." And in *NLRB v. J. J. Collins' Sons, Inc.*, *supra*, the Board's inclusion of an employee who was not within the unambiguous terms of the stipulation was found to be in error, the Court declaring:

"... [T]he bargaining unit here involved was defined and its limits circumscribed by stipulation of the company and the Union. And the Board's exercise of discretion was restricted by the Board to its approval of the unit as submitted by the parties . . . [C]onsiderations applicable when the Board makes its own independent determination defining the appropriate bargaining unit do not control here where it is merely interpreting the language used by the parties to define and limit the unit in a stipulation for a consent election. The primary question here is what the parties intended." 332 F.2d 523 at 525.

2. *The Record Contains Supporting Extrinsic Evidence of Intent To Exclude the Garage Employees and No Evidence to the Contrary*

Assuming, without conceding, that the stipulation was not so clear on its face as to show an unambiguous intent to exclude the challenged employees, extrinsic evidence amply supports such an intent. Where a stipulation is ambiguous, considerations of "community of interest" can be resorted to in order to ascertain the intent of the parties. *NLRB v. Midwest Television, Inc.*, *supra*; *NLRB v. Joclin*, *supra*. The question is not whether the employees in question have such a community of interest with the other employees so as to require their inclusion or exclusion from the unit

as a matter of law, but rather whether consideration of such community of interest demonstrates the *intent* to include or exclude the employees. It is a factual determination, one which will help to decide the ultimate question of the parties' intent, and one which requires a hearing if those facts are in dispute. The Company submits that the only decision which the Board could have rendered without a hearing would have had to have been for the Company, as the facts were so overwhelmingly in its favor.

The evidence presented to the Regional Director demonstrated that there was a total lack of community of interest and contact between the garage employees and the employees located in Syracuse, and the Regional Director so found. (J.A. 186). In the Regional Director's words:

"the garage is a separately located and distinct operation from the plant; the mechanics are separately supervised; there is no interchange with production and maintenance personnel; the mechanics do not share in the production bonus or perform work directly related to production; they have a different pay week; their function is part of the Employer's distribution system; and their work and interests are separate and distinct from those of the production and maintenance employees. . . ."

These factual determinations by the Regional Director clearly show that the parties could not have intended to include employees with such diverse interests in the same unit. Any ambiguity in the unit definition accordingly would have to be resolved in favor of the exclusion of the garage employees.

Moreover, the garage employees themselves testified that they felt they had little in common with the production and maintenance employees who were considerably less skilled than they. And the evidence demonstrated that they were paid from a different payroll, received substantially higher wages and worked a much longer work week than production and maintenance personnel. The garage employees, like the haulaway drivers, did not receive any part of the weekly production bonus which represented a significant portion of the production and maintenance employees' compensation and

which was directly related to the production rather than the sales function of the business.

Furthermore, regardless of the intent of the parties to a stipulation, employees cannot be included in a unit if to do so would run counter to National labor policy. *NLRB v. Tennessee Packers, Inc., supra*; *Tidewater Oil Co. v. NLRB*, 358 F.2d 363 (2nd Cir. 1966). If an employee is not "sufficiently concerned with the terms and conditions of employment in a unit to warrant his participation in the selection of a bargaining agent," it has been held that he is not eligible to vote in the election. *NLRB v. Ideal Laundry and Dry Cleaning Co., supra* at 716; *NLRB v. Belcher Towing*, 284 F.2d 118 (5th Cir. 1960). In *Tennessee Packers, supra*, the Court stated that even if the stipulation there were found to be ambiguous, the finding that the Clarksville employees did not share a community of interest with the out-of-town employees was supported by substantial evidence and precluded the inclusion of the out-of-town drivers in the unit. Similarly, on the basis of the factual findings of Regional Director and the entire record in this case, there is no community of interest between the garage employees and the production and maintenance employees; the joining of such employees in one unit is inappropriate and a violation of National labor law.

Further indicating the intent of the parties to exclude the garage employees from the unit was evidence which the Employer produced showing that the garage was operated as a separate adjunct of the Employer's business, and that Timmons and Kleinknight ran it much like an independent establishment. They had authority to purchase a substantial amount of equipment without the necessity for approval or consultation, kept their own inventory and other records, and were totally and independently responsible for the safety and security of the garage and its equipment. It was shown that the garage employees purchased almost anything needed for the garage operation from whatever sources they selected and that they could even pledge the employer's credit in so doing! The garage employees, it was shown in evidence and documents submitted to the Regional Director, dealt with salesmen personally and purchased approximately \$40,000 worth of equipment annually. (J.A. 454-456; Representation Case Exhibit L to Affidavit of E. W. Bechtold,

12-8-66). All of this amount was on their pledge of the Company's credit. The only review by the accounting department was to ascertain from the garage employees' signatures that the item had been received by them, that the equipment was in their possession and control, and that the bill should be paid. (J.A. 398-399).

Such evidence of the almost independent status of the garage employees and their responsibilities in the running of the operation is a further indication that the parties did not intend them to be included in the same unit with the rank and file employees. Most importantly, however, the fact they have the authority to, and in fact do, pledge the Employer's credit in substantial amounts demonstrates that they are managerial employees whose inclusion in the unit would run counter to established labor policy. *NLRB v. Howard Johnson Company*, 398 F.2d 435 (3rd Cir. 1968); *Grand Lodge Employees' Association*, 145 NLRB 1521 (1964). In the *Grand Lodge* case, the Board stated that it normally excludes as managerial employees, personnel who pledge an employer's credit, and it there excluded an employee from the unit because he purchased between \$60,000 to \$100,000 of supplies per year, pledged the employer's credit, rarely consulted with the officers of the Company in making purchases and could charge supplies without approval from a superior. All of these factors were shown to be present here with respect to the garage employees.

In "*Overton Markets*," 142 NLRB 615 (1963) the Board found a meat specialist to have interests allied with management and excluded him from the unit for reasons which are equally applicable here. Like the garage employees, the meat specialist was found to purchase goods, maintain inventory, and to work his own hours without a supervisor. In *Oscar Ewing, Inc.*, 124 NLRB 941 (1959) the Board excluded the employee in charge of the employer's garage partly because "he also has the power to pledge the Employer's credit for purchases of repair parts up to a value of \$100." 124 NLRB at 943. Likewise, in *Florence Stove Co.*, 98 NLRB 16, 17 (1952), the Board stated:

"The duties of the assistant purchasing agent and the buyer include, among others, the placing of orders for various items of supplies and equipment. It

appears that they effectively bind the Employer's credit in the regular course of their work. *In accordance with established Board practice*, we find that these employees are managerial employees, and shall therefore exclude them from the unit." (Emphasis added.)

See also *American Lithofold Corporation*, 107 NLRB 1061 (1954). In *Howard-Cooper Corporation*, 105 NLRB 753 (1953), the Board commented that the shop clerk had sufficient community of interest with the other employees in the proposed unit to warrant his inclusion therein. But it went on to state, at 754:

"However, there is evidence in the record which suggests that, in procuring parts from local suppliers, he may have authority to pledge the Employer's credit. If he does in fact have such authority, we would exclude him as a managerial employee."

The inclusion of the garage employees violated the long established policy of excluding employees who can pledge the employer's credit. On this ground alone, the Board's decision must be set aside as being arbitrary and contrary to law.

A still further indication of the parties' intent to exclude the garage employees and proof that they could not properly be included in the unit was evidence submitted by the Employer which showed that they had full responsibility for the safety of the garage and its contents. They were the only employees with keys to the garage. No other employees or watchman looked after the garage at any time. In *Watchmanitors, Inc.*, 128 NLRB 903 (1960), the Board found employees who spent as little as 10 percent of their time in guard duties but who were responsible for the safety of the building and its contents to be guards. In the same sense, the garage employees here, who were responsible for the safety of the garage, were guards who should have been excluded from the unit as provided in the stipulation, which specifically excluded "guards."

Shortly after the stipulation was signed and several weeks before the election the Employer sent its eligibility list to the Regional Director who in turn sent it to the Union. The two garage employees were not on the list, yet the Union did not raise the

question of the absence of these employees' names until immediately before the election. If the Union had intended to include them in the unit at the time of entering into the stipulation, would it have waited until the 11th hour to make this fact known? In dealing with a somewhat similar situation in *NLRB v. Schapiro & Whitehouse, Inc.*, *supra*, the Fourth Circuit Court of Appeals stated, at 676:

"Aware before the election of his employment status the union's deliberate abstention from any question of his inclusion in the representation unit, we think, barred its challenge of him after the election. The point is trenchantly made by Judge Wisdom in *Shoreline Enterprises of America, Inc. v. NLRB*, 262 F.2d 933, 943 (5th Cir. 1959) in these words:

"The basic policy—we endorse it—is that a company and a union must be held to their agreements, as any other party is held to an agreement. In cases involving a pre-election resolution of eligibility issues between a company and union it is especially important to hold the parties to their contract. To permit either to repudiate a pre-election agreement and redetermine the eligible members of a bargaining unit, *after* an election has been held, would enfeeble the consent election procedure."

The Union's acceptance of the eligibility list until the last moment should estop it from asserting that the parties intended the inclusion of the two garage employees when they entered into the stipulation.

#### B. The Board Erred in Making Its Findings as to the Intent of the Parties

##### 1. *The Board's Analysis Was Arbitrary and Capricious as a Matter of Law*

Despite the unambiguous terms of the stipulation and the clear rule of law requiring the Board to stay within the four corners of such an agreement between the parties, the Board went beyond the stipulation to decide that employees who were not "production and maintenance employees at the Employer's Syracuse, Indiana estab-

listment" were intended to be included in the unit. The Board arrived at this result by looking at the change of wording which occurred in two respects between the Union's petition and the stipulation. Aside from the question of the Board's error in turning to this extrinsic evidence in light of the clear meaning of the stipulation, the weight and interpretation put on these changes were erroneous and arbitrary as a matter of law.

The Board attached great significance to the fact that the Union had originally defined the unit in terms of the Employer's "plant" in the petition, while the stipulation was phrased in terms of the employer's "establishment," the Board reasoning that this change was "indicative of an intent to cover the entire business unit of the Employer . . ." (J.A. 217). No factual or documentary support or rationale whatsoever was presented for the conclusion so easily reached by the Board. Yet, as we have shown above, the word "establishment" has a well defined and accepted meaning in business, government and law which is exactly the opposite of the meaning given to it by the Board. *A. H. Phillips, Inc. v. Walling, supra*. There is *per contra* no legal support for the Board's novel construction. Rather than demonstrating an intent to *expand* the bargaining unit, the change of wording, if it is to be given any significance at all, must be deemed to show an intent to *restrict* the unit to a "distinct physical place of business," i.e., the Employer's production buildings in Syracuse. The use of the word "plant" would have been considerably more ambiguous, that term not having had the benefit of Supreme Court and other judicial interpretations. Clearly, the Board acted arbitrarily and capriciously in deciding as important an issue as this by ignoring all precedent and usage of the words being interpreted. When a term or phrase which has a commonly accepted meaning is used in an agreement, the parties to the agreement must be considered to have intended the usual meaning of the term. Here there was absolutely no evidence to demonstrate that the Union and the Employer had intended anything but the usual meaning of the word "establishment" as defined by the Supreme Court.

Moreover, the Board's error in attaching the significance it did to the change of wording from "plant" to "establishment" is mani-

fest when it is realized that, (1) the wording was changed without prior consultation with the Employer, and (2) that the Regional Director who participated in the formulation of the stipulation was the same Regional Director who decided that the parties did not intend to include the garage operators in the stipulated unit. (J.A. 348-349). And when the Union, on November 4, 1966, immediately after the election, set forth its position on the challenged ballots in a letter to the Regional Director, it attached no significance whatsoever to this change of wording. Certainly, if the Regional Director and the Union had intended this word change to indicate that the unit was to be expanded to include the garage, they would have so stated.

The Board also placed great weight on the change of wording which (in the stipulation) excluded "all mobile home haulaway truck drivers" rather than "all truck drivers" (as in the petition). The Board felt that this change somehow showed an intent to include the garage mechanics. The clear impact of this change, however, demonstrates an intent which is exactly the opposite of the conclusion reached by the Board. As the evidence showed, and as the Regional Director found, the garage employees' job was to service the *haulaway trucks*, and any time spent on any other trucks of the employer amounted to only an insignificant portion of their time and occurred only in rare emergency situations. By excluding the haulaway drivers, clearly the parties intended to exclude also those persons who spent almost all of their time working on the haulaway equipment. By including local truck drivers, the Union showed its intent to maintain the distinction between those employees directly involved with production (at the production facility in Syracuse) and those employees concerned with transporting the finished product, who were located apart from the main buildings—i.e., the haulaway drivers and the garage mechanics. As the haulaway drivers had frequent contact with the employees located at the Syracuse buildings, their specific exclusion was designed to prevent any question from arising as to their status. (J.A. 352-353). The garage employees, on the other hand, had no such contacts and no similar ambiguity could have arisen as to them.

The Board has thus ignored the clearly manifested intent of the parties to the stipulation and through distorted and reverse logic, has managed to find the contrary intent. Such a decision is not supported by substantial evidence, is arbitrary, and must be set aside.

2. *The Board Erred in Resolving Substantial and Material Factual Issues Without Reviewing the Evidence Submitted to the Regional Director and Without Holding a Hearing.*

The Company submits, as set forth above, that the stipulation was unambiguous and clearly demonstrated the intent of the parties to exclude the garage employees from the unit. Assuming, *arguendo*, that the question of intent could not be decided from the stipulation itself in favor of excluding the challenged employees from the unit, it is clear that the language of the stipulation could not be deemed to favor their inclusion. Any decision finding the employees to be within the unit would have to be made upon an examination of all the extrinsic evidence and, if substantial and material factual issues were present, pursuant to the holding of a hearing. *NLRB v. Bata Shoe Company, supra*; *NLRB v. Joclin Manufacturing Co., supra*. In *Joclin*, as here, the stipulation did not clearly provide for the inclusion of the challenged employees in the unit. The Court stated that the ambiguity would thus have to be resolved by considering evidence of practical construction and it ruled that the factual dispute as to includibility would have to be resolved in a full evidentiary hearing or else the challenges would have to be sustained. As the Court stated, 314 F.2d at 631-2:

"... a court cannot properly enforce an order finding an employer guilty of an unwarranted refusal to bargain with a union certified in an election if it appears, with respect to challenges affecting the result, either that they were disposed of erroneously as a matter of law or that the employer raised 'substantial and material factual issues' under the Regulations and was denied a hearing that he seasonably requested."

Nevertheless, the Board in the instant case resolved substantial factual issues as to the intent of the parties and the appropriateness of the

unit without reviewing the whole record—i.e., the materials the Company had submitted to the Regional Director—and without holding an evidentiary hearing.

In its Decision, the Board stated that it did not agree with the Regional Director's conclusion that the garage employees had no community of interest with the production and maintenance employees. The Board stated no reason for this determination, however, and the only facts it had before it—those set forth in the Regional Director's Decision—completely supported his finding. No facts to the contrary were cited. The Board's decision on this important, and perhaps conclusive, factual matter was thus not only not supported by substantial evidence but in fact it was not supported by any evidence whatsoever. If the Board were going to reverse the Regional Director, it must have had its own factual hearing to provide it with a basis for concluding differently. *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1950).

When the Board looked at factual evidence beyond the terms of the stipulation to determine the intent of the parties, it refused to consider the evidence which had been proffered by the Employer relative to this question. An extensive amount of testimony had been submitted to the Regional Director showing the complete lack of community of interest between the garage employees and the production and maintenance employees, the independent and managerial status of the garage employees, the failure of the Union to object to the exclusion of the mechanics from the eligibility list and other matters which would lend support to the conclusion that the parties had not intended to include them in the unit. It was this evidence which led the Regional Director to decide to sustain the challenges. The Employer sought to have the Board review these matters and incorporated by reference the more than 1200 pages of testimony, affidavits and exhibits in its Exceptions. Nevertheless, the Board proceeded to determine the intent of the parties by examining inconsequential word changes without reviewing any of this additional evidence. The failure of the Board to review the entire record relating to the factual questions of the intent of the parties and the includibility of the mechanics in the unit was a denial of the Employer's right to due process. *NLRB v. Universal Camera, supra*.

It is unquestioned that numerous material and substantial issues of fact with regard to the challenged employees' eligibility are present in the instant case. When the Regional Director handed down his Report deciding the issue of the challenges favorably to the Employer, the Employer did not file Exceptions with respect to that portion of the Report (except to the Regional Director's ruling on the managerial-guard status of the employees). See *Bausch & Lomb, Inc. v. NLRB*, 404 F.2d 1222 (2nd Cir., 1968). But when the Union filed its Exceptions to the Report it stated that it was excepting to the issuance of a certification of "no representation" on the ground that "the issuance of a certification without a hearing deprives petitioner of due process of law because there are disputed issues of fact which the Regional Director has resolved against petitioner without affording petitioner any hearing." *No claim was made by the Union at any point that the questions could be resolved in its favor without the holding of a hearing.* Included in the list of factual issues which the Union asserted were in dispute were: (1) the reasons for the omission of the garage employees' names from the eligibility list; (2) the reasons behind the parties' use of the word "establishment"; (3) the question of the mechanics' contact with other employees; (4) the reasons behind the exclusion of the haulaway drivers and the question of whether the mechanics served as an adjunct to the local truck drivers; (5) the question of whether there was any interchange of employees; and (6) the question of whether the work and interests of the garage mechanics are separate and distinct from the production and maintenance employees or share a close community of interest with them. (It is interesting to note here that the Union did not assert that the garage employees were production and maintenance employees, but rather consistently drew a distinction between the garage employees and the production and maintenance employees. This would seem to put in question the Board's statement in its Decision "that 'production and maintenance employees' is meant as a general term.")

The Union was correct in asserting that these were all factual issues and that if it were to get a favorable ruling on the challenges, these issues would have to be resolved in a hearing. Nevertheless, the Board proceeded to reverse the Regional Director's ruling on the

factual questions of the intent of the parties and the community of interest of the employees without affording the Employer the right to present its evidence at a hearing or to interview or cross examine witnesses. Surely this was a denial of due process of law. *NLRB v. Smith Industries, Inc.*, *supra*; *Excelsior Laundry v. NLRB*, 401 F.2d 484 (10th Cir. 1968).

Furthermore, in its Exceptions and brief, the Employer excepted to the Regional Director's ruling that the evidence did not support the Employer's contention that the garage employees constituted, among other things, managerial and security personnel. The Employer pointed out that the evidence did support its contentions. As outlined above there was considerable evidence submitted by the Employer to demonstrate that these employees ran the garage almost as an independent operation and that they had the authority to pledge the Employer's credit in substantial amounts. At the very least, the Employer had made out a *prima facie* case on this factual issue and it was entitled to a hearing thereon. *Howell Refining Co. v. NLRB*, *supra*; *Automation and Measurement Div., The Bendix Corp. v. NLRB*, 400 F.2d 141 (6th Cir. 1968).

And on the question of whether the garage employees could, in any case, be placed in the same unit with the production and maintenance employees with whom the Regional Director found they had no community of interest, the language of the Tenth Circuit in *NLRB v. Ideal Laundry and Dry Cleaning Co.*, *supra*, at 715, is of relevance:

"The appropriateness of the bargaining unit is the salient issue in this unfair labor practice proceedings, and respondent is, to be sure, entitled to a due process hearing on that issue. And, if an opportunity for a full hearing on the critical issue was not afforded in the representation proceedings, respondent is entitled to be heard in this unfair labor practice proceedings."

By overturning the Regional Director's ruling on the challenges, without reviewing the Employer's evidence and without granting a hearing, the Board acted arbitrarily and capriciously and deprived the Employer of due process of law.

**C. The Board Erred in Failing To Void the Clearly Identifiable Ballots of the Challenged Employees**

It is a well settled and long standing principle of National labor policy that markings which serve to distinguish or identify ballots will render such ballots void as being inconsistent with the principle of secret elections required by the National Labor Relations Act. *NLRB v. Ideal Laundry and Dry Cleaning Co.*, *supra*; *NLRB v. National Truck Rental Co.*, 116 App. D.C. 248, 239 F.2d 422 (D.C. Cir. 1956); *Semi-Steel Casting Co. v. NLRB*, 160 F.2d 388 (8th Cir. 1947); *Laconia Malleable Iron Co., Inc.*, 95 NLRB 161 (1951); *Ebco Manufacturing Company*, 88 NLRB 983 (1950); *Burlington Mills Corporation*, 56 NLRB 365 (1944). As stated in *Burlington Mills, supra*, to count such ballots "clearly would open the door to the exertion of influence such as to prevent the exercise of the voters' free choice." 56 NLRB at 368.

When the Board reversed the Regional Director's decision on the challenges to the two garage employees, it ordered that their votes be counted. On May 16, 1967, the parties gathered in the Board's Regional Office for the counting of these ballots. Pursuant to the Board's procedure on challenges, the ballots were in special envelopes marked "Challenged Ballot - Secret Envelope." Each envelope had a stub on which the names of the respective employees were written. Generally, before the envelopes are opened, the stubs are removed so that the identity of the employees whose ballots are in the envelopes cannot be ascertained. Here, however, the name of one of the employees, Richard Timmons, was printed across the face of the envelope, where all observers could plainly see it. The remaining envelope was opened first. When the ballot was removed from that envelope it was evident to all present that substantial portions of two corners of the ballot had been torn off. All the parties inspected the envelope to see if the torn-off pieces could be located, but they could not be. Timmons' ballot was then removed from his envelope and the Board agent "shuffled" the two ballots and then counted them.

Clearly both ballots were readily identifiable and no amount of shuffling could disguise that fact. Since everyone in the room knew

that the ballot with the torn corners did not come from the envelope with Timmons' name on it, it was obvious that the torn ballot was employee Kleinknight's ballot and that the whole ballot was Timmons'. Had the corners not been torn off the one ballot, or had the name not been written on the envelope of the other, the ballots would not have been identifiable when put together. But here the combination of these two highly irregular markings served to preserve the voters' identities.

The Company challenged the counting of these ballots and requested that they be declared void. But in another one of the Alice-in-Wonderland type exercises of logic so prevalent in this case, the Regional Director found that because the untorn ballot itself contained no identifying marks it was not void and the mere fact that the voter's identity was known did not invalidate the election. On Exceptions, the Board adopted the Regional Director's decision.

That Timmons' ballot itself did not contain any identifying markings is not relevant. For the fact is that the ballot was clearly identifiable as his by virtue of his name appearing on the envelope and the condition of the other ballot. Certainly both of these identifying characteristics appeared to have been deliberately and intentionally made. As this Court noted in *NLRB v. National Truck Rental Co.*, *supra*, at 426, "a marking which appears to have been deliberately made and which may serve to identify the voter renders the ballot void." And as the Board stated in *Laconia Malleable Iron Co., Inc.*, *supra*, at 162:

" . . . our concern for preserving the secrecy of the ballot in elections conducted by this Board requires that we permit no opportunities for identification of voter.

"Because the markings may have been deliberately made, and may have served to reveal the identity of the voter, we find that the ballot is void."

In asserting that the ballot was valid because it did not contain any identifying marks, the Board completely ignored the circumstances which made the ballot identifiable. Surely, the Board cannot take

the position that only marks on the ballot itself can cause it to be identifiable.

The purpose of the rule rendering identifiable ballots void as indicated in the *Burlington Mills Corporation case, supra*, is clearly to deter employers and unions from using coercion or other means to imperil the employees' freedom of choice by causing them in some way to distinguish or identify their ballots. *Semi-Steel Casting Co. v. NLRB, supra; Ebco Manufacturing Company, supra*. It should matter not how that identification comes. And the fact the whole challenge procedure can violate, to some degree, the secrecy of the ballot does not affect the rule which, as noted, acts as a deterrent against coercive action. For while challenges may make an employee's vote known, they do not open the door to the kind of abuse which could occur if identifiable ballots were not voided. As the Court in *NLRB v. Ideal Laundry & Dry Cleaning Co., supra*, stated at 718-719:

"It is argued moreover that the challenge procedure involuntarily destroyed the secrecy of the ballot; and that the rule [of secrecy] falls with the reason therefor. The short and conclusive answer is that the Board and not the voters prescribe the rules for the conduct of the election, and all voters must abide the rules. The identification of the voter voided the ballot by operation of the rule itself, and *the Board had no power to give it any validity.*" (Emphasis added.)

The actions of the Board here have worked an abridgement of a clear statute of the United States which requires secret ballots in a secret election. If there be any justification for such an abridgement on the basis of expedience, the challenge procedure should not be invoked to validate otherwise clearly marked ballots.

As the Kleinknight ballot with the torn corners was also clearly identifiable and appeared to have been deliberately made so, both ballots should have been voided. The Board's decision not to do so was not supported by the evidence and was arbitrary and capricious as a matter of law. Had the two ballots correctly been declared void, the election would have resulted in a tie, and the Union would not have been certified.

**III. THE BOARD ERRED IN OVERRULING THE COMPANY'S OBJECTIONS TO CONDUCT AFFECTING THE RESULTS OF THE ELECTION WITHOUT HOLDING A HEARING OR REVIEWING EVIDENCE SUBMITTED TO THE REGIONAL DIRECTOR.**

In his Report and Recommendations of December 29, 1966, the Regional Director recommended that the Company's objections to the election be overruled on the grounds that the Union's literature was not objectionable on its face; that even if it were the Company had time to reply; and that there was insufficient evidence to support the Company's other objections. The Board adopted these findings on April 24, 1967, without reviewing the evidence submitted to the Regional Director and without stating whether its decision was based on a conclusion that the objections did not allege conduct which could have had an effect on the election or on a finding that the Company had failed to proffer any evidence which would warrant overruling the Regional Director's findings. However, on May 5, 1967, in denying the Company's Motion for Reconsideration, the Board did state that, accepting the facts alleged in the Company's Motion and brief as true, it found no basis for disturbing its original decision or for holding a hearing. Liberty submits that the conduct of the Union to which it objected had to have had a significant impact on the election as a matter of law, that it had proffered a substantial amount of evidence to support its contentions, and that its objections, proffered evidence and exceptions raised substantial and material issues of fact which required the holding of a full evidentiary hearing.

**A. The Conduct of the Union Alleged in the Company's Objections Had a Substantial Impact on the Election.**

**1. *Misrepresentations About the Company's Bonus System.***

In campaign literature mailed to employees on Friday, October 21, 1966, the Union stated that the plant superintendent had been manipulating the Company's production bonus since the filing of the Union's petition in order to buy votes against the Union. Again, in a circular dated October 26 (two days before the election) the Union stated that the Company had been paying "extra bonus"

since the filing of the petition in order to fool employees. It is unclear from the record whether this circular was mailed or handed out to employees at the plant. And in a handbill distributed on the eve of the election the Union intimated that the Company had not been paying the employees the entire bonus that they were entitled to during the year.

In its objections to the election, the Company alleged that these statements were entirely false and were part of a conspiracy by the Union to interfere with the conduct of a free and untrammelled election. It demonstrated in the evidence which it submitted to the Regional Director that the Union had for some time been engaged in causing a slowdown of the Company's production line which in turn had caused the bonus to be abnormally low; and that when the Union ceased this activity a short time after the filing of its petition, the resulting increase in bonus payments laid the way for its false charges of manipulation and buying votes. (J.A. 414-416). The Company demonstrated the importance of the bonus to employees, the extremely complicated method by which the bonus was computed (J.A. 367), and the fact that there had been no change of any nature in scheduling of production or in computing the bonus. (J.A. 173-174, 421-423). In addition, the Company provided the Regional Director with proof that a number of the employees whose names appeared on one of the pieces of literature dated October 21 had not authorized the statements made, and in fact did not agree with them.

The Regional Director, in the portion of his Report dealing with the Union's objections, found that the Company had not in any way rigged or manipulated the bonus system. But he also found that the Union's misrepresentation about the bonus was not objectionable on its face and that there was no proof that the employees causing the slowdown were agents of the Union. He further found that, assuming the misrepresentation was objectionable, the Company had time to reply to it.

Elections will be set aside where a party deliberately makes material misrepresentations of fact in circumstances in which employees are unable properly to evaluate the truth or falsity of the asser-

tions. *NLRB v. Houston Chronicle Publishing Company*, 300 F.2d 273 (5th Cir. 1962); *Cross Company v. NLRB*, 286 F.2d 799 (6th Cir. 1961), rehearing denied, 288 F.2d 188 (6th Cir. 1961); *Collins & Aikman Corporation v. NLRB*, 383 F.2d 722 (4th Cir. 1965); See also *NLRB v. Bonnie Enterprises, Inc.*, 341 F.2d 712 (4th Cir. 1965). Generally, the Board will also consider whether the facts misrepresented are within the promulgating party's special knowledge and whether the objecting party could have corrected the false assertions before the election. *Gallenkamp Stores Co. v. NLRB*, 402 F.2d 525 (9th Cir. 1968); *NLRB v. Bata Shoe Company, supra*; *NLRB v. Houston Chronicle Publishing Company, supra*; *Celanese Corporation of America v. NLRB*, 291 F.2d 224 (7th Cir. 1961); *Hollywood Ceramics Company, Inc., supra*.

The Regional Director took the position that the Union's false assertion that the Company was paying an extra bonus in order to buy votes was not, on its face, sufficient to warrant setting aside the election. Yet the Regional Director, and the Board, could not determine merely from the fact of the misrepresentation whether it could have had an effect on the election. Directly relevant to the determination of this question were such other factors as the importance of the assertion to employees, whether the Union had special knowledge of the facts, the ability of the employees to evaluate the statement and the Company's ability to effectively counter the statement.

The Company produced evidence to demonstrate that the bonus system was an integral and significant part of the employees' compensation plan and of extreme importance to them. The Union's false statement was the very type of assertion involving economic matters which the Board has noted is of utmost concern to employees. *Hollywood Ceramics Company, Inc., supra*. As the Court stated in *NLRB v. Houston Chronicle Publishing Company, supra*, at 280:

"Purportedly authoritative and truthful assertions concerning wages and pensions of the character of those made in this case are not mere prattle; they are the staff of life for Unions and members, the

selfsame subjects concerning which men organize and elect their representatives to bargain."

Certainly, a false claim that the Company was using the bonus system as a tool against unionization presented a most serious threat to the employees' well being, and interfered with their exercise of free choice at the election.

The Company produced evidence to show that the Union, through its agents, had caused the Company's production to be slowed during a period before the filing of the petition and shortly thereafter. Knowledge of this slowdown did not come to the Company's attention until after the election when the investigation had begun. Thus, the Union had particularized special knowledge of the facts contained in its allegations, of which the Company had none. In other words, the Union knew why the bonus appeared higher after the petition was filed, for it, unbeknownst to the Company, had caused the bonus to be lower in the preceding period. Moreover, the evidence demonstrated that a number of the more experienced employees kept close tabs on the bonus payments and knew that there had been no "manipulation" or "extra bonus" paid. (J.A. 367-368, 421-423, 438).

The Company also established that the bonus was computed by an extremely complicated formula. (J.A. 367-370). Accordingly, it was extremely difficult for the average employee to evaluate the Union's assertion that the bonus was being rigged. (J.A. 367-368, 421-423). And the fact that the misrepresentation was associated with the names of a number of the older, more respected employees (several of whom stated they did not authorize the statements made) lent considerable credence to the statement, thus making it even more difficult for the majority of employees to put the assertion in proper perspective.

The Regional Director rejected the Company's contentions that several employees' names were listed as being on the organizing committee without their permission. However, he failed to deal with the fact that the evidence submitted by the Company contained the testimony of several "members" of the organizing committee that they did not authorize, accept or believe the statements

contained in the October 21 circular which went out over their names and that they were quite embarrassed to be associated with that literature in any way. (J.A. 408-413).

The first circular was mailed and not received by employees until around Monday, October 24, just a few days before the election. (J.A. 309). It was unclear as to just what the Union meant by "manipulation" of the bonus and "buying votes." In view of these rather vague assertions and the complicated nature of the bonus formula, it was difficult for the Company to come up with an adequate response to the misrepresentation in the short time available. Merely to deny the Union's allegations would have served to reinforce their apparent authority. See *NLRB v. Houston Chronicle Publishing Company*, *supra*. To present a detailed explanation showing clearly that there had been no manipulation of the bonus in terms which the employees could understand would have taken several days of reviewing records, compiling statistics, and presenting the material in understandable and readable form, which time would not allow. And, as noted, the names of thirteen employees were associated with the statement. If the Company were to determine what lay behind the Union's statement it would have had to question them on the subject and thus risk being charged with an unfair labor practice violation. As the Company had followed a scrupulously fair and quiet course of conduct in order to prevent any charges of objectionable activity from being leveled against it and in order to maintain a free election atmosphere—not making *any* speeches or distributing *any* circulars and instructing all of its supervisors to refrain from discussing the election with employees—it was not going to take such risks at a point so close to the election and further inflame the situation created by the Union. (J.A. 311-313). In fact, it appears that it was the very success of the Company's non-campaign which stimulated the Union to make the misrepresentation. In its frustration, the Union sought to place the Company on the horns of an impossible dilemma—making its silence become an apparent admission of guilt while at the same time challenging it to take a position which could only serve to strengthen the Union's position. Thus the International Representative of the Union challenged the President of the Company to "repudiate this

activity attributed to the Plant Superintendent." Clearly, if the Company had spoken out at this point for the first time in the campaign, it would have appeared to be bowing to the Union's wishes and acknowledging that what the Union alleged was true—regardless of whatever denials were made.

The Union's charges were timed and designed to have the maximum coercive effect on the employees, to make it appear as if there was time for the Company to reply to the charges, while at the same time effectively making it impossible for the Company to make any effective reply. See *NLRB v. Trancoa Chemical Corporation, supra*. The best reply that the Company could have given to the charges—that the Union itself had created an apparent increase in the bonus by slowing down the production line and then later letting it run at normal speed—did not come to its attention until after the election was over. Certainly, it cannot be said that the Company had time to reply when it did not know the basis of the accusation.

In addition, the Union republished its claim about a manipulated bonus on October 26, 1966, just two days before the election and this time it enlarged upon its previous statement and made explicit the charge that the Company was paying an "extra bonus" to fool the employees. It is not clear whether this circular reached the Company and the employees on the 26th or later and the Regional Director did not clarify this very important point. In its October 27th circular the Union intimated that the Company had been cheating employees with the bonus. These statements made on the eve of the election should have been found to have interfered with the election. As the Fourth Circuit Court of Appeals stated in *Schneider Mills, Inc. v. NLRB*, 390 F.2d 375, 380 (4th Cir. 1968):

"To the extent that previously made misrepresentations were repeated, we think that their vitiating effect on the validity of the election can be obviated only if the company had a second opportunity to make an effective reply, whether the company availed itself of the opportunity or not."

See also *Cross Company v. NLRB, supra*, where the Court pointed out that "repetition is emphasis and the cumulative effect of the

charges by the Union should not lightly have been dismissed." 286 F.2d at 801.

Clearly, the Union's misrepresentations regarding the bonus met all of the Board's criteria necessary for setting aside an election—it involved a matter of vital concern to employees, within the special knowledge of the Union which the employees could not properly evaluate and to which the Company could not make an effective reply. The Regional Director erred in not considering the surrounding circumstances in making his Report. And his error was compounded when the Board failed to review the evidence presented by the Company which would have established the objectionability of the statements, or at least the fact that substantial and material factual issues existed which required the holding of an evidentiary hearing.

## 2. *The Slow Down*

The evidence submitted by the Company also established that by slowing down the production line, the Union had committed highly objectionable acts which interfered with the free choice of the employees. Certainly, assuming these acts were proved (and the Board stated in its Order that it was taking the facts alleged by the Company as true), the election had to be set aside on this ground.

The Regional Director apparently rejected the Company's objections relating to the slowdown, to oral representations that the Company was rigging the bonus and to attempts to elicit anti-Union statements from supervisory personnel on the ground that the persons involved in these incidents were not shown to be agents of the Union. But as the Fifth Circuit stated in *Home Town Foods, Inc., d/b/a Foremost Dairies of the South v. NLRB*, 379 F.2d 241 (5th Cir. 1967):

"We are not impressed with the argument that all coercive acts must be shown to be attributable to the union itself, rather than to the rank and file of its supporters." 379 F.2d at 244.

The Court then quoted the Board's decision in *Diamond State Poultry Co.*, 107 NLRB 3, 6 (1953) where the Board had stated that:

"It is not material that the fear and disorder may have been created by individual employees and nonemployees and that their conduct cannot be attributed either to the Employer or the unions. The important fact is that such conditions exist and that a free election is thereby rendered impossible."

See also *NLRB v. Staub Cleaners*, 357 F.2d 1 (2nd Cir. 1966); *P.D. Gwaltney, Jr., & Co.*, 74 NLRB 371 (1947).

3. *Misrepresentations and Rumors Regarding Alleged Loss of Benefits and Statements by the Plant Superintendent*

In the literature which it mailed to employees on October 21, the Union made many serious accusations of wrongdoing against the Company's plant superintendent, using a number of strong epithets to describe him and his alleged actions. Among other things, the Union charged that the Superintendent had threatened to close the plant and to take away the employees' Christmas bonus and smoking privileges if the Union were to win the election. It further accused him of unlawfully interrogating employees and of spying on Union meetings, describing his actions as "disgraceful" and "illegal". It stated that the Superintendent was using "fear tactics" in order to defeat the Union, and that he was a "desperate man doing desperate things."

These accusations were not merely predictions of what the Company might or could do—matters which employees would be able to evaluate. Rather, they were false misrepresentations of material facts concerning the Company's actions. Certainly, statements such as these could only instill fear in the minds of employees and prevent the exercise of free judgment at the election. They served to discredit the Company and were timed and phrased in such a manner that a mere denial by the Company would have succeeded only in giving greater credence to the accusations. (It is worthy of note that the Union presented absolutely no evidence to the Regional Director to support the assertions that the Superintendent had made these statements.) As the Fifth Circuit stated in *NLRB v. Houston Chronicle Publishing Company*, *supra*, at 279:

"Rather than detracting from the authority with which the Union assertions were imbued, the attempted rebuttal by the Chronicle only served to reinforce their strength and authority . . . . The reply of the Chronicle was nothing more than an ineffectual attempt to demonstrate the falsity of the Union claims by attacking some of the unstated premises on which they rested. The weakness of such an attack is obvious; the conclusion attacked may be valid on still another unstated premise. There was simply no way by which the Chronicle telegram could destroy the overall effect of the misleading Union representation."

Again, the fact that the accusations were made over the names of thirteen employees (many of whom did not authorize or agree with the statements made) made the charges extremely difficult for the Company to counter. The Company, on the other hand, took the position that the best way to allow an election free from interference to take place was to remain silent and not try to influence votes. Yet the Union sought to prevent the Company from following this most lawful and unobjectionable procedure by making its very silence appear to be an admission of guilt.

Invective such as that emanating from the Union here has often been the cause for setting aside elections as have misrepresentations about the employers' acts. In *Schneider Mills, Inc. v. NLRB, supra*, the Union in a handbill had stated that the company president had made derogatory remarks about two pro-union employees stating that he would like to see them tied and burned to death. It went on to suggest that the president was "mentally disturbed", "dangerous" and Hitler-like. The Court in *Schneider Mills, supra*, in view of the fact that the record did not include any evidence to show that any such statement was made by the president and that the employer's proffer of proof to the contrary had been rejected, assumed, as the Court here must do, that no such statements had been made. The Fourth Circuit there found that the Union's accusations far exceeded permissible standards of campaign appeals, stating that from these employees "could well conclude that a union would be their only source of protection, thus interfering substan-

tially with free and untrammelled choice." 390 F.2d at 379. It found that the propaganda was of such a highly inflammatory nature that it created conditions which made "impossible a sober informed exercise of the franchise" and thus invalidated the election. 390 F.2d at 380.

In *NLRB v. Lord Baltimore Press, Inc.*, 370 F.2d 397 (8th Cir. 1966), the union had made allegedly false assertions during an election campaign that the company had bribed an NLRB official in order to have certain unfair labor practice charges dropped. The Court pointed out that such misrepresentations would naturally color the integrity of the employer in respect to its labor relations and in agreement with the First Circuit in *NLRB v. Trancoa Chemical Corp.*, *supra*, it stated that such a resort to deliberate falsehood or intentional fraud is generally a matter of significance in a representation election. Noting that the Board's own standard, as stated in *Hollywood Ceramics Co.*, *supra*, is whether a misrepresentation "may reasonably be expected to have a significant impact on the election," the Court held that,

"... the Board could not abstractly hold that the allegedly false accusations made were not reasonably capable of having any significant impact on the employees' voting. The Board therefore was not entitled to make summary denial of [the employer's] request for a hearing." 370 F.2d at 402.

In *NLRB v. Schapiro & Whitehouse, Inc.*, *supra*, the Court set aside an election on the basis of inflammatory literature distributed four weeks and one week before the election. Clearly, the Court decided, although without saying so explicitly, that there can be no effective reply to appeals of this sort, no matter how much time is available.

In *NLRB v. Lord Baltimore Press, Inc.*, 300 F.2d 671 (4th Cir. 1962), the Court found that importunities to join the Union made by a Supervisor of the Company, along with statements that the plant superintendent was a "hatchet man" and that the company had done dirty tricks to the employees, could lead to the annulment of the election if the statements were proved at a hearing. And in *NLRB v. Trinity Steel Co.*, 214 F.2d 120 (5th Cir. 1954) it was

found that the Union's representation that the Company had lied about a prospective wage increase planned by the Company, though made in good faith, would not allow the employees to register a free and untrammelled choice and was so glaring (along with two other related statements) that the election had to be set aside.

By the Union's own admission, as stated in its objections to the election (J.A. 176-7), "during the course of the campaign period various rumors and expressions of fear pertaining to the loss of . . . benefits and privileges . . . and plant shut down were widespread and prevalent among employees and thus created an atmosphere of fear and anxiety among the voters 'and interfered with their freedom of choice . . .'" The Regional Director affirmed that such rumors were in fact present at the plant, but that they could not be attributed to any actions or statements made by the Company. He further noted that "The Employer gave no campaign speeches, nor distributed any campaign literature during the pre-election period, and there was no evidence proffered or adduced that the Employer was in any way responsible for the rumors or alleged employee apprehension." J.A. 177).

Clearly, therefore, the rumors had to originate with the Union or with rank and file employees. In either case, all parties have acknowledged that the rumors prevented the exercise of free choice by the employees in the election. In such a case, the election must be set aside or at the very least the case must be remanded for a hearing on the facts surrounding the rumors and their impact. The Second Circuit's decision in *NLRB v. Staub Cleaners, Inc.*, *supra*, is very much in point on this issue:

"The Regional Director found that the rumor originated with a rank and file employee, not with the Union. Nothing in the record belies this. The Regional Director then held that, since Union responsibility had not been shown, 'the Employer's objections do not raise substantial or material factual issues with respect to the conduct of the election.'

"In so holding, the Regional Director has completely ignored the doctrine developed by the Board that 'elements, regardless of their source, which in the experi-

enced judgment of the Board make impossible impartial tests, are sufficient grounds for the invalidation of an election.' P.D. Gwaltney, Jr. & Co., 74 NLRB 371, 373 (1947). The Regional Director, in fact, found that the rumor existed and was repeated at the plant 'apparently being interpreted by other employees in a serious manner.' The Regional Director, nevertheless, denied respondents' request for a hearing on the matter and, thus, foreclosed the avenue to findings on the impact of the rumor on the election here. Reviewing courts should not be forced to speculate as to what the facts are and as to what the Board's decision would have been. The Board's function is to hear the evidence and make findings. This case must be remanded to the Board for findings on the rumor issue." 357 F.2d at 2-3.

#### 4. *Offer of Waiver of Initiation Fee and Claim of Majority*

The Company also objected to statements in the October 21 circular which could have been interpreted by employees to be an offer to waive initiation fees by the Union for those employees who voted "yes" in the election. The circular stated that any employee who signed a card before the election would not have to pay the initiation fee. This was followed immediately by a sentence stating: "Sign your card today . . . and . . . VOTE "YES" ON OCTOBER 28TH . . . ." And in a circular distributed on October 27, the Union stated that "*YOUR VOTE* will establish the initiation fee of our Union . . . ." which was followed on the next line by "*VOTE 'YES' TOMORROW.*" Certainly, employees could have read these statements as requiring a "yes" vote in order to obtain the waiver of initiation fees. Such economic inducements have been held to seriously interfere with the employees' freedom of choice. *NLRB v. Gilmore Industries, Inc.*, 341 F.2d 240 (6th Cir., 1965). And, without question, by conditioning the waiver on joining the Union *before* the election, the Union's offer violated the rule of the *NLRB v. Gorbea, Perez & Morell, S. en C.*, 328 F.2d 679, 682 (1st Cir. 1964) where the Court stated that:

"We are compelled to conclude that the waiver of initiation fees predicated upon joining before the election is a substantial organizational inducement."

Certainly, an employee who has to join the Union *before* the election in order to avoid the payment of initiation fees will be considerably more inclined to vote for the Union of which he is now a member than he would have been if he could have waited until the election results were known. As the Court in *NLRB v. Gorbea, Perez & Morell, S. en C., supra*, stated at 682, n. 6:

"While it is possible to draw a distinction between buying memberships and buying votes . . . on reflection it seems to us that as a matter of common sense a union with cards in its pocket must regard the outcome of an election substantially more hopefully than would one which had failed to obtain them."

In answering the Board's contention that such waivers are necessary and should be tolerated, the Court said, at 682, n. 7:

"We suggest that such a need can be sufficiently met and at the same time the inducing effect on the election can be obviated by announcing a somewhat later cut-off date [than the date of the election]."

And, as this Court, citing the *Gilmore Industries* and *Gorbea, Perez & Morell* cases, stated in *Truck Drivers and Helpers, Local Union 568 v. NLRB*, 126 U.S. App. D.C. 360, 379 F.2d 137 (D.C. Cir. 1967), at 145 n. 15:

"A union's promise of benefit may be as disruptive of free choice as a threat, and may exert no less restraining influence on that choice."

Similarly, the Union's assertion in its October 26 circular, that a "comfortable majority" of employees had signed cards was objected to by the Company as being a false misrepresentation of fact which substantially interfered with the free electoral process. Certainly, here was a matter entirely within the Union's special knowledge to which the Company could make no reply.

The Company's objections alleged conduct on the part of the Union which should have been found to have affected and interfered

with the election. This is especially true when the objectionable acts are considered cumulatively, for the question to be decided is whether, in combination, the totality of circumstances prevented the holding of a free and fair election. Cf. *Howell Refining Co. v. NLRB*, *supra*; *Sonoco Products Co. v. NLRB*, *supra*; *Home Town Foods, Inc., d/b/a Foremost Dairies of the South v. NLRB*, *supra*. And the fact that the election was decided by only two out of almost 200 votes cast is further reason for careful scrutiny of the Union's conduct. *Follett Corp. v. NLRB*, 397 F.2d 91 (7th Cir. 1968); *Collins and Aikman Corp. v. NLRB*, *supra*. In view of the fact that the Company submitted a substantial amount of evidence to support its objections, the Regional Director and the Board erred in not setting the election aside or, at least, holding an evidentiary hearing on the disputed issues of fact.

#### B. The Board Erred in Failing to Hold a Hearing on Disputed Issues of Fact.

It is well settled that if the objections to an election raise substantial and material issues of fact, a hearing must be held to resolve those issues. *Home Town Foods, Inc., d/b/a Foremost Dairies of the South v. NLRB*, *supra*; *NLRB v. Bata Shoe Company, Inc.*, *supra*; *United States Rubber Co. v. NLRB*, 373 F.2d 602 (5th Cir. 1967). The failure to hold such a hearing at some stage of the proceedings before the employer is found to have committed an unfair labor practice by refusing to bargain with the union is a violation of due process. *NLRB v. Smith Industries*, *supra*; *NLRB v. Union Brothers, Inc.*, *supra*; *NLRB v. Ortronix, Inc.*, 380 F.2d 737 (5th Cir. 1967). Liberty submits that even if its objections to the election and the evidence which it had submitted in support of those objections were not enough to establish that the Union's misconduct interfered with the free electoral process, it had established a *prima facie* case warranting the setting aside of the election and had raised substantial issues of fact requiring that a hearing be held.

As discussed above, a finding that the Union's misrepresentations with regard to the Company's handling of the bonus system were not objectionable could not be made without a consideration of all the surrounding circumstances, including the importance of the bonus to employees, the extreme complexity of its computation,

whether employees could properly evaluate the allegations made by the Union, whether the Union had special knowledge of the facts, i.e. that a slow-down caused by the Union had made the bonus fluctuate, and whether the fact that the allegations were associated with the names of a group of more experienced employees, which were against the wishes of at least some of them, gave the statements more authority than they would otherwise have had. Liberty submitted substantial evidence and testimony relative to these factors. Yet the Regional Director ignored this evidence and found that the misrepresentations were not unlawful on their face. The Company excepted to the Regional Director's failure to consider these factual matters in determining whether the Union's statement interfered with the election. The Board, however, affirmed the Director's findings without ordering a hearing or even reviewing Liberty's submitted evidence to determine if factual issues were actually raised therein, as Liberty had requested.

The Regional Director also found that, assuming the Union's misrepresentations were objectionable, the Employer had had time to reply to them. Aside from the fact that a simple denial would have been ineffective in countering many of the misrepresentations and would merely have played into the Union's hands, substantial factual issues with regard to this finding were raised. The evidence submitted by the Company demonstrated that the Company had no knowledge of the Union's role in causing the bonus to fluctuate until after the election; that the complexity of the bonus formula made it extremely difficult to prepare an adequate and convincing response in the limited time available to the Company; and that the fact that several of the employees whose names were associated with the accusations did not authorize the use of their names or agree with the statements made did not come to the Company's attention until after the election. Moreover, the strongest falsehood with regard to the bonus was dated only two days before the election, and it is not clear from the record whether it was received by the employees and the Company on that day, the next day, or the day of the election. Despite these substantial factual issues relating to the Company's ability to respond to the Union's misrepresentations, and the Company's Exceptions to the Regional Director's finding, the Board

affirmed that finding, again without holding a hearing or even reviewing the evidence submitted by the Company. Certainly, the question of whether a party has the ability to reply to a misrepresentation cannot be answered merely by looking at the calendar; all the circumstances affecting that ability must also be considered.

The Regional Director's Decision found that the Company had not established an agency relationship between the Union and its adherents who had committed various objectionable acts, including the slow-down of the Company's production line. The Employer, however, had shown that these acts were committed in order to "get the Union in" by members of the Union's organizing committee. Clearly, there was a substantial issue of fact present in the question of whether or not these persons were acting on behalf of the Union. Where persons who are organizing on behalf of a union are shown to have committed objectionable acts and there is a claim that an agency relationship exists between the union and those persons a hearing is clearly required to resolve the issue: *NLRB v. Smith Industries, supra*; *Howell Refining Co. v. NLRB, supra*. In *Howell Refining Co. v. NLRB, supra*, the persons involved were found by the Regional Director to be, at most, "staunch supporters of the Union." Nevertheless, even without evidence to show that these employees were participating in the organization of the plant, as is present here, the Court stated, at 218:

"Our review of the record in the instant case convinces us that substantial and material factual issues are present and that the evidence tendered by the company meets the prescribed standards. Specifically, we find that the company's allegation that the individuals involved were union agents and the union's denial of agency, when considered in light of all the evidence, create such an issue. . . . Thus there appears to be a head-on-clash between the company on the one hand and the union and the employees on the other."

And in *NLRB v. Smith Industries, Inc., supra*, after noting that the Board had applied an improper legal standard in requiring that the coercive acts be attributable directly to the union itself, the court held that the employer was entitled to a hearing on the agency dis-

pute. The only showing that the employer had made was that one of several employees alleged to have committed the acts in question had the reputation of being an organizer, though the union had failed to designate any official representatives. The Court concluded, at 894:

"Obviously, the facts as to the alleged acts of coercion and as to the agency of the employees allegedly making those threats are in dispute, the truth is not clear, and the Board erred in acting summarily without a hearing."

Furthermore, even if the acts complained of and the rumors circulating around the plant could not be attributed directly to the Union, a hearing was required to ascertain the surrounding facts and the impact of these matters. *NLRB v. Lord Baltimore Press, Inc.*, *supra* (8th Cir. 1966); *NLRB v. Staub Cleaners, Inc.*, *supra*.

Another factual issue in dispute concerned the names of employees placed in the Union's campaign literature. The Regional Director found that no employee listed had not given his permission or assented to being on the organization committee. Yet the Employer's evidence demonstrated that at least one employee signed a paper without knowing that he thereby became a member of the committee. More importantly, several members of the committee testified that they had not authorized the harsh and false language set forth by the Union in the October 21 circular over their names and that they were quite embarrassed to have their names associated with the material and repudiated the statements contained therein. The Regional Director, however, did not comment or rule on this evidence.

Thus, the Company's objections and evidence raised many substantial issues of fact which required the holding of a hearing for resolution. Moreover, a substantial issue existed as to the impact of the Union's actions on the election and as to "whether, in combination, *all of the circumstances* on which [the Company] relies prevented a fair election." *Sonoco Products Co. v. NLRB*, *supra* at 843; *Home Town Foods, Inc. v. NLRB*, *supra*; *NLRB v. Lord Baltimore Press, Inc.*, *supra* (8th Cir. 1966). As the Court in *NLRB v. Smith Industries, Inc.*, *supra*, at 895, commented:

"However, the problem in these representation proceedings is that we are dealing with the elusive concept of the subjective effect of objective union conduct on 'the minds of the voters,' and subjective as well as objective evidence may be sufficient to overturn the election. . . . An evaluation of the historic facts, without an inquiry into the surrounding circumstances, without viewing those facts cumulatively, and without an opportunity to directly observe and examine witnesses, may lead to erroneous legal conclusions."

The Board erred in holding that the Company's objections to the election did not warrant setting it aside and that no issues of fact had been raised which required a hearing. This error was compounded when the Trial Examiner in the unfair labor practice proceeding refused to receive any evidence on the representation issues. See *NLRB v. Harrah's Club*, 403 F.2d 865 (9th Cir. 1968), and *NLRB v. Ideal Laundry and Dry Cleaning Co.*, *supra*.

#### IV. THE BOARD ERRED IN FINDING THAT THE COMPANY HAD DISCHARGED WILLIS NEWBY FOR ANTI-UNION REASONS

The Trial Examiner found that the Company had dismissed one employee, Willis Newby, for cause and not for any anti-union reasons as alleged by the General Counsel. The Board, however, reversed the Trial Examiner's determination and held that the Company had violated Section 8(a)(3) of the Act by discharging Newby. The Company submits that the Board's reversal of the Trial Examiner was arbitrary and not supported by the evidence.

The ultimate question in a case involving an alleged discriminatory discharge is the question of the motivation of the employer. This is a fact question which the Trial Examiner is best able to resolve by assessing the demeanor and credibility of the witnesses to determine the truthfulness of their assertions. The Board, like an appellate court, has only the cold record before it and the factual determinations of the Trial Examiner based on credibility and demeanor must be given considerable weight. *NLRB v. Walton Mfg. Co.*, 369 U.S. 404 (1962); *NLRB v. Lenz Company*, 396 F.2d 905 (6th Cir. 1968);

*Wm. H. Block Co. v. NLRB*, 367 F.2d 38 (7th Cir. 1966); *Boeing Airplane Co. v. NLRB*, 217 F.2d 369 (9th Cir. 1954).

Where the Board and the Trial Examiner's conclusions differ, the evidence must be examined with greater care by the Court. *Burke Golf Equipment Corp. v. NLRB*, 284 F.2d 943 (6th Cir. 1960); *AMCO Electric v. NLRB*, 358 F.2d 370 (9th Cir. 1966).

As the Supreme Court stated in *Universal Camera v. NLRB*, *supra* at 496:

"... evidence supporting a conclusion may be less substantial when an impartial, experienced examiner who has observed the witnesses and lived with the case has drawn conclusions different from the Board's than when he has reached the same conclusion."

It is undisputed that the President of the Company was quite concerned about the considerable degree of absenteeism that had been occurring and in July or August of 1967 he made a speech to the assembled employees requiring them to report in if they could not be at work for any reason. (J.A. 72-73, 131-132, 136-138). When, on August 30, 1967, during the height of the Company's busiest production period, a fire took place which closed the plant down for several days, the problem was compounded. The fall season was a time when the plant worked at full capacity to fill orders for the following season's lines, and a failure to meet customers' orders then could mean the loss of a considerable amount of future business. (J.A. 124-126). On the day of the fire, a Wednesday, President Hussey explained to the employees that they would try to get back into production by Friday but that they "would probably have to shoot for Tuesday" the day after Labor Day. (J.A. 29-30, 85, 129, 138-139). Even Newby himself testified that the following Tuesday had been set as the day to return to work. (J.A. 50-51, 73-74). And his various conflicting explanations for his absence demonstrate that there was no lack of understanding in this regard. (J.A. 55, 66-72, 144-145). Clearly, there was absolutely no ambiguity about the intention to resume work on the following Tuesday if it could not be done by Friday. Every one of the Company's 200 employees either reported to work on time or called in a reason for

being absent, with the sole exceptions of Newby and Amos Yoder. Yoder, it later was discovered, had quit, but, as the Trial Examiner found, this information had not been received by management on the morning of Tuesday, September 5. (J.A. 87-89, 133, 140).

Thus, it is entirely understandable that when President Hussey learned that Newby and Yoder were the only employees who had failed to report to work or to call in as had explicitly been required on this critically important day after the shutdown, he felt they had no interest in the welfare or future of the Company and ordered them both fired. (J.A. 130-134). The record establishes that employees have been warned and reprimanded and fired for failing to report in when absent. (J.A. 35-37, 161-162; GC Exhs. 8 & 9). The rule was clearly not one designed merely for purposes of taking care of Newby. Evidence that other employees were not fired for one such instance is inapposite in light of the extraordinary circumstances which existed in the wake of the fire. While Mr. Hussey may have acted hastily and in anger against the two employees whom he felt did not care about the Company, his actions were not motivated by any anti-union considerations whatsoever. It is undisputed that Amos Yoder had no affiliation with the Union. Yet Mr. Hussey, who at the time believed that he too was absent without reporting in, ordered him fired with the same blade that struck Newby. The Trial Examiner heard Mr. Hussey's testimony, observed him on the witness stand and credited his testimony. The Board, however, with no rational basis for doing so, reversed these findings. Clearly the Board was acting on the basis of no evidence to support the decision.

The record is completely lacking in any substantial evidence of anti-union hostility. Newby was only one of a large number of employees who were on the Union's organizing and administrative committees and it has not been shown that he was in any way one of the more active union adherents. Yet nothing was ever done to inhibit the participation of any of the other employees in the Union's affairs. The record is replete with evidence that the Union's organizing drive was conducted openly and without fear of any reprisals from the Company. During the pre-election campaign the Company took absolutely no steps to discourage or defeat the Union—it dis-

tributed no leaflets, held no meetings and instructed all supervisory personnel to remain silent on the question of the union. (J.A. 61-63, 123-124). The Regional Director and the Board found that the Company had committed no objectionable conduct. Numerous pro-Union employees, including Newby himself, testified that there was no fear or coercion present on the Company's premises during the 13 or so months of the Union's organizing drive. The Trial Examiner found that Newby's discharge had "occurred in a setting free of unfair labor practices other than [the Company's] 'technical' violation of Section 8(a)(5)." (J.A. 266). Clearly the Company had nothing to gain in September 1967 by discouraging Union activity—the Union had received the Board's certification and the technical question of whether the Company was legally required to bargain with the Union rested ultimately with the Court. The Company had not acted to persuade employees to vote against the Union when such persuasion might have had an effect; certainly it could have had no anti-union purpose in discharging Newby at a time when influencing employees would not affect the Union's bargaining status.

The Board's decision, by a type of boot strap reasoning, finds anti-Union hostility to be manifested in two or three insignificant isolated alleged acts of interrogation by supervisors, to be discussed below. Yet the Trial Examiner, who again had the advantage of seeing the various witnesses on the stand, had found that no unlawful interrogation had taken place, "that employees openly engaged in union activity at the plant free from unlawful interference by [the Company]," and that the Company's actions were "non-coercive." (J.A. 266). Those familiar with the Board's decisional processes are aware that the Board never likes to find a discriminatory discharge without having some independent 8(a)(1) violations to buttress its decision. So the Board here reversed the Trial Examiner's findings as to the 8(a)(1) charges and then found that anti-Union hostility was shown in those findings. But independent of these new determinations by the Board, there is absolutely nothing present in the voluminous record of this case to demonstrate any such feelings on the part of the Employer. And, even if the Board's 8(a)(1) interrogation findings are sustained, the incidents which occurred were so trivial and insignificant as to be of virtually no

value to demonstrate that the Company had discharged Willis Newby on the first day of work after the fire because of his Union affiliation and not because of his absence and breach of the Company's rules. Clearly, the Board's decision on this matter was not supported by evidence when considering the record as a whole.

**V. THE BOARD ERRED IN FINDING THAT THE COMPANY  
HAD UNLAWFULLY INTERROGATED AND THREATENED  
EMPLOYEES**

As noted, the Trial Examiner concluded that three alleged conversations between employees and supervisors were not coercive and not violative of the Act. Again the Board, without the benefit of having seen the witnesses and being able to assess their credibility, reversed the Trial Examiner's findings. And in so doing the Board distorted the record and blew the incidents out of all proportion.

On page 5 of its Decision, the Board stated that "the record establishes that about mid-September 1967, Vice President Weaver asked employee Giengerich 'who the guys in the union were'", and it concluded that "the question was a broad inquiry into the Union sentiments of the employees." Yet nowhere in the record is there any testimony establishing that the question the Board quotes was asked. The whole of Giengerich's testimony on this point was as follows (J.A. 116):

"Q. Can you state whether or not anything was asked you about anyone in the Union?

A. Yes.

Q. Would you please tell us.

A. Yes. Them guys that were in there and I told him, Griffith and Floyd Rapp and Clyde Campbell, they are on the Board on the committee."

The Board found that Giengerich's answer was "cautious" and showed "trepidation on his part to supply the [Company] with any more information" than it already possessed. Yet Giengerich's testimony is completely unclear as to the question that Weaver had asked—it might have been who the guys on the *Committee* were. In that case, Giengerich's answer would have been open, truthful and

without a hint of fear. And on this subject, as the Trial Examiner noted, the Company had been furnished with a full list of Committee members by the Union. For all the record reveals, Weaver may have forgotten who those employees were and he may simply have been trying to refresh his memory. Moreover, the Board completely ignored Giengerich's testimony on cross examination that no employee was worried about the Company's attitude toward the Union and that the employees freely discussed the Union on the job to a great extent without fear or interference from the Company. Clearly, the Board had no substantial evidence on which it could have based a reversal of the Trial Examiner's findings as to Weaver's question. See *Rocky Mountain Natural Gas Co. v. NLRB*, 326 F.2d 949 (10th Cir. 1964).

As to the second incident the Board stated, on page 5 of the Decision (J.A. 299), "the record also shows that Superintendent Warren asked employee Schrock about September 30, 1967, how he felt about the Union. When Schrock said he thought it would be a good thing, Warren expressed disagreement . . . ." The record, however, clearly shows that it was Schrock, not Warren, who asked how the other felt about the Union and that it was Warren who said he thought it would be a good thing. The record on this point reads as follows. (J.A. 109-110):

"Q. Now directing your attention to the period of time after the fire, did you have any conversations with Charles Warren about the Union and if you did please tell us how it occurred and what was stated"?

A. I had reference with Charles Warren about the union and it was about three weeks after the fire. I was on my way over to get some carpeting in the main building by the time clock. I said, 'Hello' and I asked him about the Union. Charlie said he felt the Union would be a good thing . . . ."

Although Schrock later appeared to contradict his own testimony, on cross-examination he reaffirmed that it was he who had opened the conversation about the Union. (J.A. 114):

"Q. But according to you in this conversation that you say took place, Mr. Warren didn't approach you,

you approached Mr. Warren, is that correct?

A. We met at the time clock in the main building. Warren said hello in so many ways but I asked him about the Union."

The Board's finding that Warren had unlawfully interrogated Schrock was thus clearly not supported by the evidence.

During the course of this conversation with Schrock, Warren was alleged to have stated that he felt that President Hussey would do something to discourage the Committee and the employees. (J.A. 110). On a later date, Warren was alleged to have wondered whether an appointment Schrock had was with the Union, and after being told it was, to have stated that if Schrock went he would be the "craziest fool that works at Liberty Coach." (J.A. 111). Warren denied making any such remarks. (J.A. 146-147). The Trial Examiner found that considering the free atmosphere which prevailed at the plant, these remarks, even if made, were non-coercive and did not constitute implied threats of economic reprisal. Once again, however, the Board reversed the Trial Examiner and considering nothing more than the words allegedly used found that the Company had violated Sec. 8(a)(1) of the Act.

It is well settled that isolated and casual remarks made without anti-union hostility do not constitute violations of the Act. *NLRB v. Ralph Printing and Lithographing Co.*, 379 F.2d 687 (8th Cir. 1967); *Dierks Forests, Inc. v. NLRB*, 385 F.2d 48 (8th Cir. 1967); *NLRB v. McCormick Steel Co.*, 381 F.2d 88 (5th Cir. 1967); *Burke Golf Equipment Corp. v. NLRB*, *supra*.

Warren's statements to Schrock were not such as to create any fear or intimidation. Schrock himself testified that he felt free to bring up the question of the Union with supervisors, and numerous employees testified as to the complete freedom from fear which existed at the Employer's plant. There was no campaign on at the time of the alleged remarks and no anti-union hostility or campaign against the Union has been shown by the Board. The 8(a)(5) charge was purely a technical one to test the validity of the Union's certification. The 8(a)(3) finding cannot be used to show anti-union hostility, since the Board based that finding largely on anti-union

animus as evidenced by the 8(a)(1) charges. Clearly more than the mere words had to be looked to in order to find that Warren threatened Schrock in any way. As stated in *NLRB v. Rockwell Manufacturing Co. (DuBois Div.)*, 271 F.2d 109, 118 (3rd Cir. 1959):

"While such an admonition could under certain circumstances be adjudged a 'threat' violative of the Act, due consideration must be given to the fact that the trial examiner who heard the testimony and observed the demeanor of the witnesses and took note of the friendliness of their relationship . . . found that it was not, and his finding merits consideration by this Court."

The admonition in the *Rockwell Manufacturing Co.* case was to "be careful." The Court pointed out that the statement was permissible as "a vague warning not coupled with a threat of reprisal" and cited *NLRB v. Houston Chronicle Publishing Co.*, 211 F.2d 848, n. 7 (5th Cir., 1954) where a statement that the employee would be hurt by his union activities was found not to be coercive. In *Dierk's Forests, Inc. v. NLRB, supra*, a threat to close down the plant was found not to be a violation of the Act, the Court stating, at 50:

"Where, however, as here, the offensive statement is isolated and not part of any systematic pattern of intimidation, there must be other circumstances fairly representative of the Company's anti-union attitude in order to support a finding of economic reprisal in violation of Section 8(a)(1)."

See also *The Fluorocarbon Company*, 168 NLRB No. 85 (1967).

The Board was completely unable to show any pattern of anti-Union hostility to support its findings that the isolated, mild, ambiguous statements of one of its supervisors and the innocent questions asked by another were coercive or threatening.<sup>8</sup> Conse-

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<sup>8</sup>The Trial Examiner erroneously excluded evidence which would have shown that a previous campaign sponsored by another Union had resulted in a letter commending the Company for its conduct of the election, even though the Union lost. (J.A. 76, 310, 474).

quently, its 8(a)(1) findings must fall. See *NLRB v. I. Posner, Inc.*, 342 F.2d 826 (2d Cir. 1965); *Bourne v. NLRB*, 332 F.2d 47 (2d Cir. 1964); *NLRB v. Power Equipment Company*, 313 F.2d 438 (6th Cir. 1963); *NLRB v. Arthur Winer, Inc.* 194 F.2d 370 (7th Cir. 1952); *John S. Barner Corp. v. NLRB*, 190 F.2d 127 (7th Cir. 1951). And as the only support which the Board had for its finding of anti-Union motivation in the discharge of Willis Newby was the 8(a)(1) findings, the discriminatory discharge finding must likewise be reversed.

### CONCLUSION

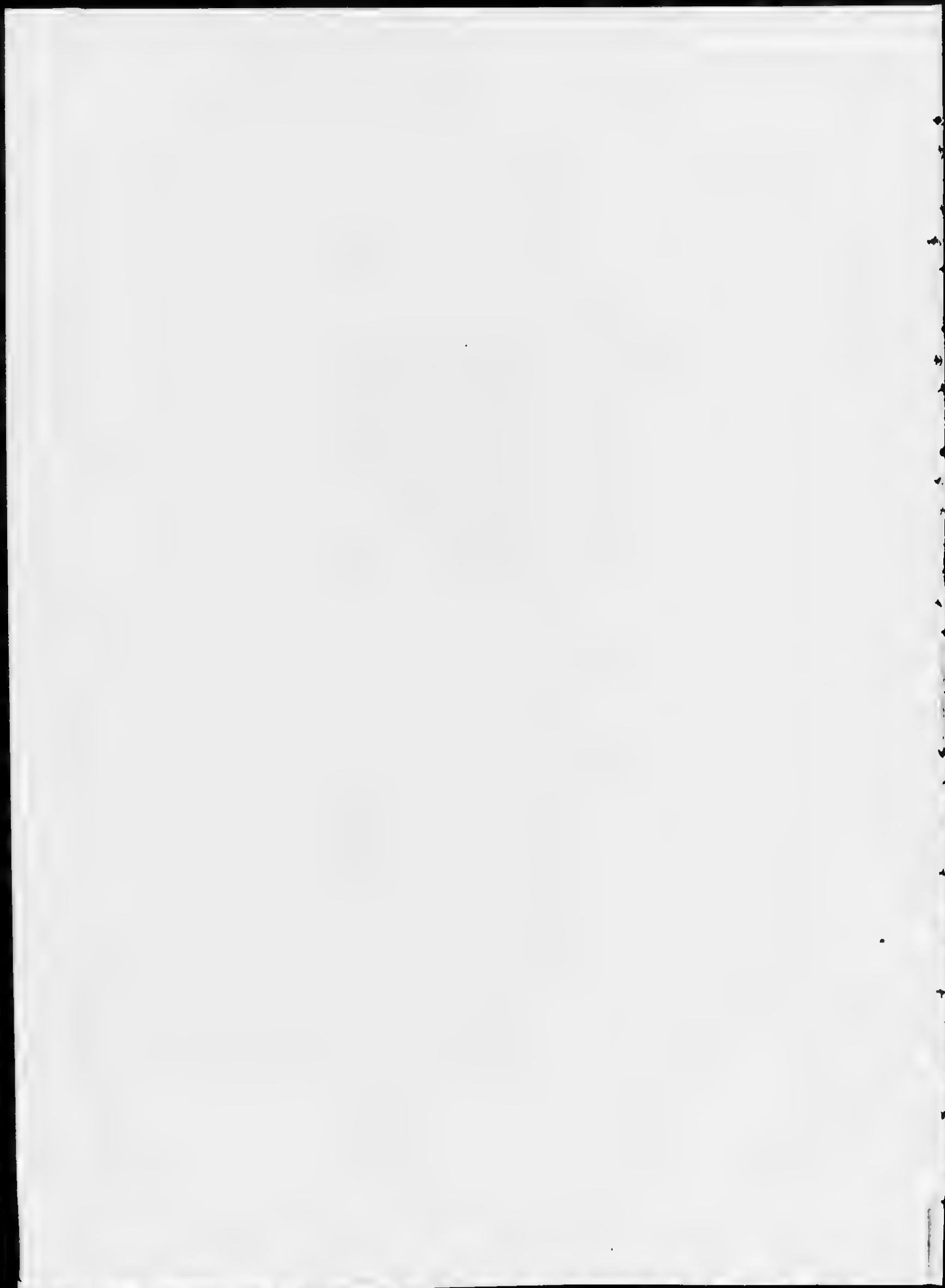
For the foregoing reasons, it is respectfully submitted that the Board's Order should be set aside and denied enforcement in its entirety; or, in the alternative, that the Section 8(a)(1) and (3) portions of the Board's Order be denied enforcement and the Section 8(a)(5) order be set aside and remanded to the Board with instructions that the Board review the evidence submitted by the Company in the representation proceedings and hold a full evidentiary hearing on the issues raised in those proceedings.

Respectfully submitted,

/s/ Julian H. Singman

/s/ Stephen M. Nassau

*Counsel for Liberty Coach  
Co., Inc.*



App. 1  
ADDENDUM

Statutes:

National Labor Relations Act, as amended (61 Stat.  
136, 73 Stat. 519, 29 U.S.C., §§ 151-168):

"Section 8(a) It shall be an unfair labor practice for  
an employer—

"(1) to interfere with, restrain, or coerce employ-  
ees in the exercise of the rights guaranteed in section  
7;

\* \* \*

"(3) by discrimination in regard to hire or tenure  
of employment or any term or condition of employ-  
ment to encourage or discourage membership in any  
labor organization: . . .

\* \* \*

"(5) to refuse to bargain collectively with the rep-  
resentatives of his employees, subject to the pro-  
visions of section 9(a)."

"Section 10(e) . . . If either party shall apply to the  
court for leave to adduce additional evidence and  
shall show to the satisfaction of the court that such  
additional evidence is material and that there were  
reasonable grounds for the failure to adduce such  
evidence in the hearing before the Board, its mem-  
ber, agent, or agency, the court may order such addi-  
tional evidence to be taken before the Board, its  
member, agent, or agency, and to be made a part of  
the record. The Board may modify its findings as to  
the facts, or make new findings, by reason of addi-  
tional evidence so taken and filed, and it shall file  
such modified or new findings, which findings with  
respect to questions of fact if supported by substan-  
tial evidence on the record considered as a whole  
shall be conclusive, and shall file its recommenda-  
tions, if any, for the modification or setting aside  
of its original order . . . ."

Rules and Regulations:

National Labor Relations Board Rules and Regulations, Series 8, as amended (29 C.F.R., Part 102, §§ 102.1 - 102.134).

"Section 102.62(b) Where a petition has been duly filed, the employer and any individuals or labor organizations representing a substantial number of the employees involved may, with the approval of the regional director, enter into an agreement providing for a waiver of hearing and a consent election leading to a determination by the Board of the facts ascertained after such consent election, if such a determination is necessary. . . ."

"Section 102.68 *Record; what constitutes; transmission to Board* — The record in the proceeding shall consist of: the petition, notice of hearing with affidavit of service thereof, motions, rulings, orders, the stenographic report of the hearing and of any oral argument before the regional director, stipulations, exhibits, documentary evidence, affidavits of service, depositions, and any briefs or other documents submitted by the parties to the regional director or to the Board, and the decision of the regional director, if any. Immediately upon issuance by the regional director of an order transferring the case to the Board, or upon issuance of an order granting a request for review by the Board, the regional director shall transmit the record to the Board."

"Section 102.69(c) [Prior to amendment of July 1, 1967] . . . Within 10 days from the date of issuance of the report on challenged ballots or objections, or both, or within such further period as the Board may allow upon written request to the Board for an extension received not later than 3 days before such exceptions are due in Washington, D.C., with copies of such request served on the other parties, any party may file with the Board in Washington, D.C., eight copies of exceptions to such report, which shall be printed or otherwise legibly duplicated, except that carbon copies of typewritten matter shall not be filed and if submitted will not be accepted. . . ."

App. 3

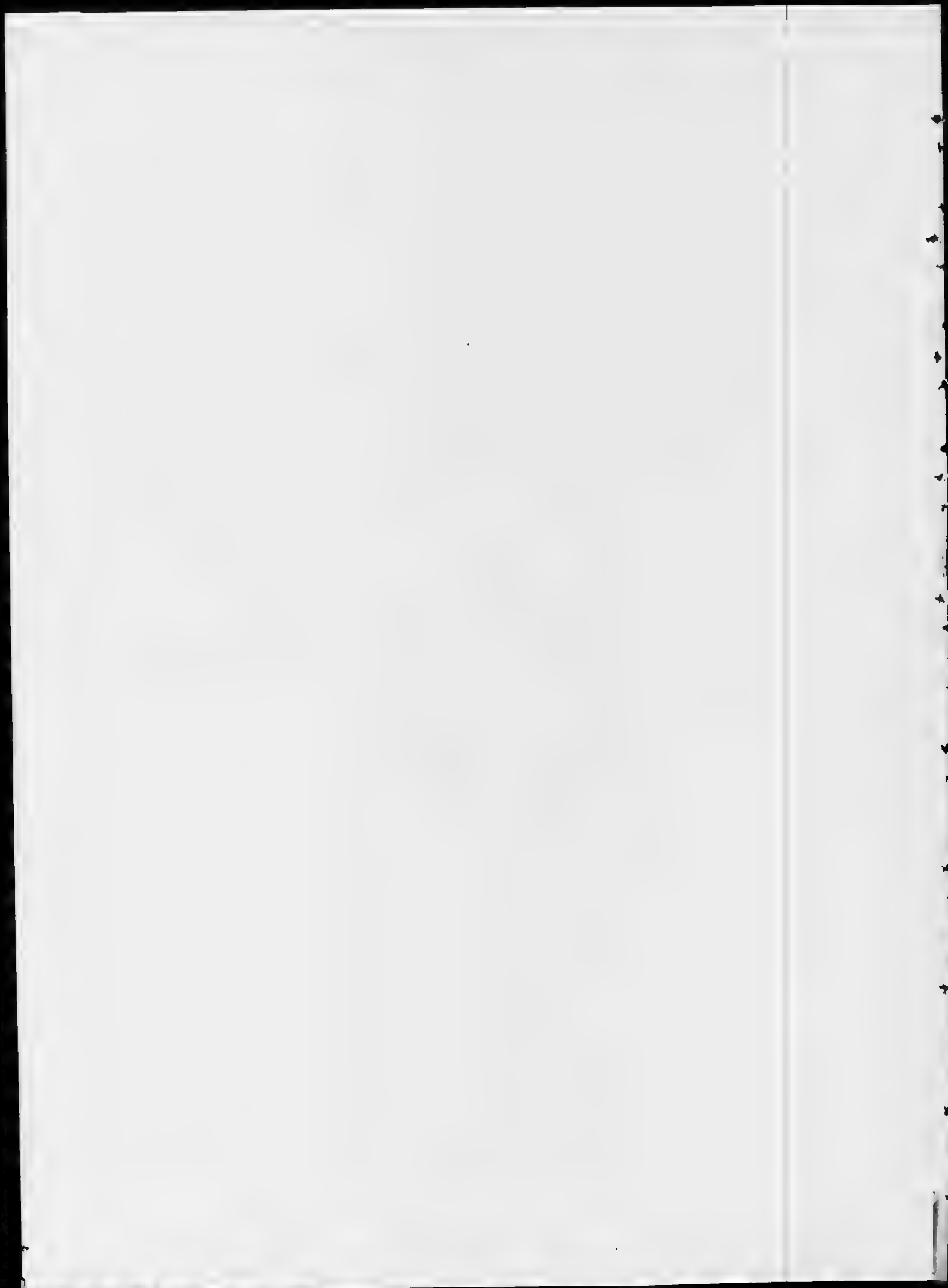
"Section 102.69(c) [As Amended July 1, 1967 (32 F.R. 9549)] . . . Within 10 days from the date of issuance of the report on challenged ballots of objections, or both, or within such further period as the Board may allow upon written request to the Board for an extension received not later than 3 days before such exceptions are due in Washington, D.C., with copies of such request served on the other parties, any party may file with the Board in Washington, D.C., eight copies of exceptions to such report, with supporting brief if desired, which shall be printed or otherwise legibly duplicated, except that carbon copies of typewritten matter shall not be filed and if submitted will not be accepted. . . ."

"Section 102.69(e) In a case involving a consent election held pursuant to section 102.62(b), if exceptions are filed, either to the report on challenged ballots or objections, or both if it be a consolidated report, and it appears to the Board that such exceptions do not raise substantial and material issues with respect to the conduct or results of the election, the Board may decide the matter forthwith upon the record, or may make other disposition of the case. If it appears to the Board that such exceptions raise substantial and material factual issues, the Board may direct the regional director or other agent of the Board to issue and cause to be served on the parties a notice of hearing on said exceptions before a hearing officer . . . ."

"Section 102.69(f) The notice of hearing, motions, rulings, orders, stenographic report of the hearing, stipulations, exceptions, documentary evidence, together with the objections to the conduct of the election or conduct affecting the results of the election, any report on such objections, any report on challenged ballots, exceptions to any such report, any briefs or other documents submitted by the parties, the decision of regional director, if any, and the record previously made as described in section 102.68, shall constitute the record in the case. Immediately upon issuance of a report on objections or challenges,

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or both, upon issuance by the regional director of an order transferring the case to the Board, or upon issuance of an order granting a request for review by the Board, the regional director shall transmit the record to the Board."



Nos. 22,184 and 22,194

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,184

INTERNATIONAL UNION OF ELECTRICAL, ELECTRONIC,  
AND MACHINE WORKERS, INC.

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 22,194

LABOR COACH COMPANY, INC.,

Respondent.

No. 22,394

LABOR COACH COMPANY, INC.,

Respondent.

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

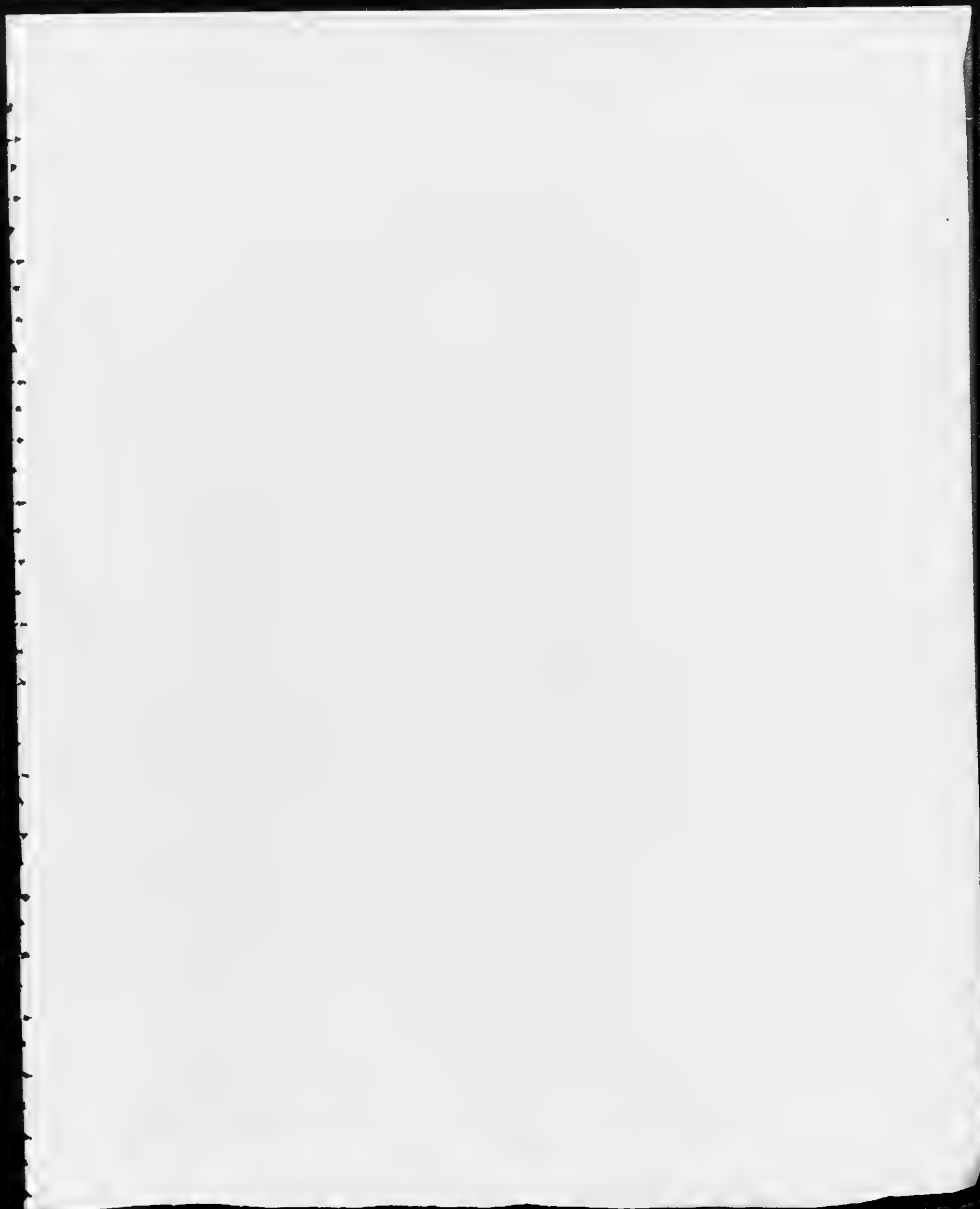
INTERNATIONAL UNION OF ELECTRICAL, ELECTRONIC,  
AND MACHINE WORKERS, INC.

Respondent.

On Petition for Writ of Habeas Corpus and  
for Enforcement of Order of the  
National Labor Relations Board

WRIT FOR THE NATIONAL LABOR RELATIONS BOARD

Respectfully Submitted,  
[Signature]  
[Name]  
[Address]  
[City]  
[State]  
[Zip]



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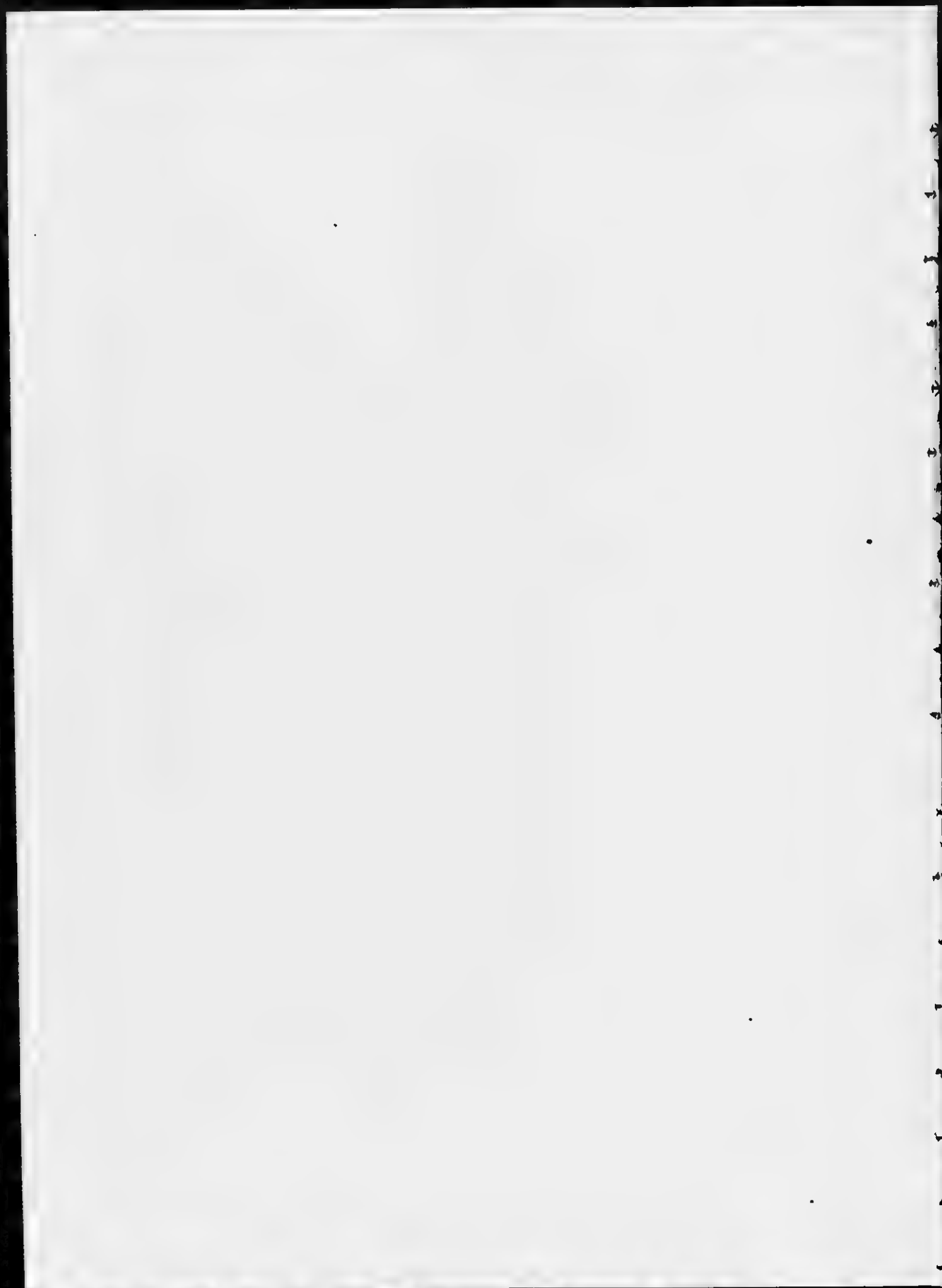
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**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 22,181

INTERNATIONAL UNION OF ELECTRICAL, RADIO,  
AND MACHINE WORKERS, AFL-CIO,

*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,

*Respondent,*

and

LIBERTY COACH COMPANY, INC.,

*Intervenor.*

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No. 22,394

LIBERTY COACH COMPANY, INC.,

*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,

*Respondent,*

and

INTERNATIONAL UNION OF ELECTRICAL, RADIO,  
AND MACHINE WORKERS, AFL-CIO,

*Intervenor.*

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On Petition for Review and Cross-Applcation  
for Enforcement of an Order of  
The National Labor Relations Board

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**BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD**

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**COUNTERSTATEMENT OF ISSUES PRESENTED**

In No. 22,181, the issue is:

Whether the Board erred in refusing to grant the additional remedies  
sought by the Union.

In No. 22,394, the issues are:

1. Whether the Board reasonably exercised its discretion in including employees Timmons and Kleinknight in the unit, in overruling the Company's objections to the election, and in overruling the Company's objections to the counting of the ballots.

2. Whether substantial evidence on the whole record supports the Board's finding that the Company discharged employee Newby in violation of Section 8(a)(3) and (1) of the Act.

3. Whether substantial evidence on the whole record supports the Board's finding that the Company interrogated and coerced its employees in violation of Section 8(a)(1) of the Act.

This case has not previously been before the Court.

### COUNTERSTATEMENT OF THE CASE

No. 21,181 is before the Court on the petition of International Union of Electrical, Radio and Machine Workers, AFL-CIO, to review and modify an order of the National Labor Relations Board. No. 22,394 is before the Court on the petition of Liberty Coach Company, Inc. to review and set aside the same order. The Board has filed a cross-application for enforcement of the order against the Company. The Board's decision and order (A. 294-302),<sup>1</sup> which issued on August 1, 1968, are reported at 172 NLRB No. 154. As the Board's order is based in part on findings made in representation proceedings under Section 9 of the Act, the record in those proceedings is part of the record before the Court, pursuant to Section 9(d) of the Act. This Court has jurisdiction by virtue of Section 10(f) of the Act,

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<sup>1</sup> "A." references are to the appendix of the parties.

which provides that "any person aggrieved by a final order of the Board . . . may obtain . . . review . . . in the United States Court of Appeals for the District of Columbia."

## I. THE BOARD'S FINDINGS OF FACT

### A. The representation proceedings

On September 27, 1966, the Union filed a petition with the National Labor Relations Board for an election to be held in a unit described as "All production and maintenance employees at the Company's plant in Syracuse, Indiana" excluding "All truck drivers, guards, professional, technical, and salaried employees, and supervisors as defined in the Act" (A. 168). A subsequent "Stipulation for Certification upon Consent Election," approved by the Acting Regional Director on October 11, 1966, provided that the unit should be "All production and maintenance employees of the Employer at its Syracuse, Indiana, establishment; BUT EXCLUDING all office clerical employees, all mobile home haulaway truck drivers, guards, and all professional employees and supervisors as defined in the Act" (Supp. A). An election was conducted on October 28, 1966, when 94 votes were cast for the Union, 94 against, with two challenged ballots (A. 236-237).

The Company and the Union filed timely objections (A. 237). Pursuant to the Board's Rules and Regulations, Series 8 (29 C.F.R.) Section 102.69(c), the Regional Director undertook the usual administrative investigation, giving the parties full opportunity to submit pertinent evidence. On December 29, 1966, he issued his report (A. 169-187) recommending that the Union's objections be overruled, since he found insufficient evidence to support them. He also recommended that the Company's objections to the Union's campaign statements be overruled because the statements contained were not objectionable on their face and even if they were, the Company

had ample time to reply (A. 181). Finally, he recommended that the challenges to the ballots be sustained on the grounds that the two employees were garage mechanics and were not in the unit (A. 186).

The Company and the Union filed exceptions to the report on the objections. The Company further asked that if the Board reversed the Regional Director's recommendations with respect to the challenged ballots, the Board order the Regional Director to furnish the Board with the testimony and other material submitted by the Company.

On April 24, 1967, the Board issued its decision, in which it adopted the Regional Director's recommendations with regard to the objections filed by the Company and the Union, but held that the two employees whose ballots were challenged should be included in the stipulated unit. The Board found that it was the intent of the stipulation, particularly when viewed in the light of the differences between the Union's petition and the Stipulation, to cover "the entire business unit of the Employer and to exclude only those narrower categories of employees so specified," and that the inclusion of the garage mechanics was not inappropriate as a matter of law (A. 217).

On April 28, 1967, the Company filed a motion to reconsider, in which, *inter alia*, it asked the Board to obtain the evidence submitted by the Company to the Regional Director and requested a hearing. The Board, on May 9, 1967, after considering the arguments alleged in the Company's motion and supporting brief, denied the motion and request for a hearing because "[T]he facts as alleged fail to provide a basis for disturbing the Board's original findings and conclusion, and . . . the Employer's contentions do not raise material and substantial factual issues which should be resolved at a hearing" (A. 236). The Board then directed the Regional Director to open and count the two ballots.

The ballots were opened on May 16. The Company filed objections to the ballots, contending that one ballot was void because the two lower corners were torn off, and that the secrecy of the other ballot was destroyed because the employee wrote his name on the envelope (A. 238). The Regional Director held in his report on June 16, 1967, that the untorn ballot was valid in that it clearly reflected the voter's intent and contained no identifying marks, and that even if the ballot were in the envelope bearing the employee's name, that such a marking would not invalidate the ballot. As both ballots had been marked "Yes" the Regional Director did not consider the challenge to the other ballot, for in either case, the election would have been won by the Union (A. 238-239). The Regional Director then recommended certification of the Union. The Company filed exceptions to the Regional Director's report (A. 246). On August 15, 1967, the Board accepted the findings of the Regional Director, stating that the Company's exceptions "raise no material or substantial issues of fact or law . . . , " and certified the Union. (A. 261). The Company's motion for reconsideration was denied by the Board on September 19, 1967.

#### B. The unfair labor practices

On August 17, 1967, the representative of the Union sent a letter to the Company president, Edward Hussey, requesting that the Company bargain with the Union. On October 24, 1967, acting on a charge filed by the Union, the General Counsel issued a complaint alleging, *inter alia*, that the Company had refused to bargain, and on December 14, 1967, the Union and the Company entered into a stipulation that the Union had requested collective bargaining and the Company refused and continued to refuse the request. The complaint also alleged that the Company had discharged employee Willis Newby because of his activities on behalf of the Union and otherwise restrained and coerced its employees in violation of Section 8(a)(1) and (3) of the Act.

## II. THE BOARD'S CONCLUSIONS AND ORDER

Following a hearing before a Trial Examiner, the Board found that the Company violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the duly certified representative of its employees (discussed *infra*, pp. 6-32). The Board further found that the Company violated Section 8(a)(3) and (1) of the Act by discharging employee Newby for engaging in union activity (discussed *infra*, pp. 32-35). Finally, the Board found that the Company violated Section 8(a)(1) of the Act by interrogating and coercing its employees concerning their union activities (discussed *infra*, pp. 35-36).<sup>2</sup>

The Board's order requires the Company to cease and desist from its unfair labor practices, to bargain with the Union on request, to offer Newby reinstatement and to make him whole for any loss of earnings he suffered as a result of the Company's discrimination against him, and to post appropriate notices (A. 301-302).

## ARGUMENT

### I. THE BOARD PROPERLY CONCLUDED THAT THE COMPANY VIOLATED SECTION 8(a)(5) AND (1) OF THE ACT BY REFUSING TO BARGAIN WITH THE DULY CERTIFIED REPRESENTATIVE OF ITS EMPLOYEES

#### A. Applicable legal principles

The Company has conceded that it refused to bargain solely in order to obtain Court review of the Board's overruling of its objections to the election and its certification of the Union. The issue presently before the Court is whether the Board acted within the "wide degree of discretion"

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<sup>2</sup> The Trial Examiner had recommended that the Board dismiss the complaint with respect to the violations of Section 8(a)(1) and (3).

(*N.L.R.B. v. A. J. Tower Co.*, 329 U.S. 324, 330 (1946)) entrusted to it by Congress in resolving problems arising in representation cases. See also: *N.L.R.B. v. Waterman S.S. Corp.*, 309 U.S. 206, 226 (1940); *Neuhoff Bros. Packers, Inc. v. N.L.R.B.*, 362 F.2d 611, 614 (C.A.5, 1966), cert. denied, 386 U.S. 956; *N.L.R.B. v. Allen Mfg. Co.*, 364 F.2d 814, 816 (C.A. 6, 1966). Where a party seeks to overturn the result of an election, the burden is not on the Board to establish the validity of the election. It is on the objecting party to show with specific evidence that the election was not fairly conducted. *N.L.R.B. v. Mattison Machine Works*, 365 U.S. 123, 124 (1961); *N.L.R.B. v. Douglas County Electric Membership Corp.*, 358 F.2d 125, 130 (C.A. 5, 1966); *N.L.R.B. v. Red Bird Foods, Inc.*, 399 F.2d 600 (C.A. 7, 1968). The burden thus assumed is a "heavy" one, *Shoreline Enterprises v. N.L.R.B.*, 262 F.2d 933, 942 (C.A. 5, 1959).

**B. The Board properly resolved the issues on the basis of the Regional Director's report and the Company's exceptions**

A substantial portion of the Company's argument (Br. 14-26, 39-42, 49-50, 59-63) is devoted to the proposition that the Board should have reviewed 1200 pages of transcript statements and several hundred pages of exhibits and held a hearing if it found any statements in conflict with the Regional Director's report. The prominence of this contention in the Company's brief belies its actual significance, for in only three instances are the materials used to support a contention arguably at odds with the Regional Director's factual findings, and as noted below (pp. 19, 21, 23), in each instance, the materials fail to support the Company's position. In view of the Company's pervasive reliance on this contention, however, and the important impact which the Company's position would have on the administration of the Act in other cases, we turn to it first.

Although Section 9(c) of the Act requires that a pre-election hearing be held to determine whether a question concerning representation exists, the statute contains no provision for post-election hearings. The Board will grant such a hearing only if it appears that the objections to the election raise "substantial and material factual issues." Board Rules and Regulations, Series 8 (29 C.F.R.), Section 102.69(c). The Regional Director's report constitutes, not a summary of the evidence, but a preliminary finding of fact which becomes determinative if not challenged by exceptions. This practice reflects the requirement that "questions preliminary to the establishment of the bargaining relationship be expeditiously resolved." *N.L.R.B. v. O. K. Van Storage, Inc.*, 297 F.2d 74, 76 (C.A. 5, 1961). Thus, in order to establish the existence of substantial and material issues of fact, it is well settled that the exceptions "must state the specific findings [in the Regional Director's report] that are controverted and must show what evidence will be presented to support a contrary conclusion." *N.L.R.B. v. Tennessee Packers, Inc., Frosty Morn Division*, 379 F.2d 172, 179 (C.A. 6, 1967), cert. denied, 389 U.S. 958. Accord: *Macomb Pottery Co. v. N.L.R.B.*, 376 F.2d 450, 452-455 (C.A. 7, 1967); *N.L.R.B. v. Simplot Co.*, 322 F.2d 170, 172 (C.A. 9, 1963). To "request a hearing, a party must, in its exceptions, define its disagreements and make an offer of proof to support findings contrary to those of the Regional Director. The Board is entitled to rely on the report of the Regional Director in the absence of specific assertions of error, substantiated by offers of proof." *N.L.R.B. v. Tennessee Packers, Inc., Frosty Morn Division, supra*. Accord: *Macomb Pottery Company, supra*; *Simplot Co., supra*; *N.L.R.B. v. O.K. Van Storage, supra*.

With respect to the challenges, the materials submitted to the Regional Director support the Regional Director's uncontested findings (A. 181-182). While the Company's exceptions (A. 207) took issue with the Regional

Director's holding that the mechanics were not managerial, clerical, confidential or security employees, the Company did not question his factual findings as to their duties. Contrary to the Company's assertion (Br. 40), although the Board rejected the Regional Director's finding that these employees should be excluded from the unit, it did not redetermine the employees' duties (see *infra*, p. 26). Moreover, when the Company first sought to elaborate on — but not contradict — those findings, it did so in a brief rather than in exceptions (A. 227). Nevertheless, the Board accepted the additional allegations as well.<sup>3</sup> (A. 235). Accordingly, the factual considerations relevant to the Board's decision on the challenges to ballots were brought to its attention more or less in the manner contemplated by its rules, and are not in dispute.

The Company's objections to election conduct were based principally on the Union's campaign materials, the campaign materials were attached to the Regional Director's report, and he assumed, as alleged in the objections, that specified assertions by the Union in the materials were false (A. 181). The Regional Director determined, however, that these alleged misrepresentations were not material and that in any event the Company had ample time to reply. The Company in its exceptions (*supra*, p. 4) took issue with the Director's conclusions and with respect to the latter ground asserted that "the scope of the charges issued but several days prior to the election was such that they could neither have been investigated or properly treated with by the Employer in any manner of convincing rebuttal

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<sup>3</sup> This brief initially was rejected by the Board as untimely filed, since it did not accompany the exceptions. When the Company asserted that the rules did not clearly provide when the supporting brief should be filed, and hence that a brief could be filed within "a reasonable time," the Board accepted the brief and amended the rules to expressly provide that the supporting brief, if filed, must accompany the exceptions. The Company asserts (Br. 25) that this action helps "demonstrate the arbitrariness of [the Board's] handling of this case," but does not suggest what else the Board could have done.

that would serve to eliminate their highly prejudicial affect [sic] prior to the election." Since the Company admittedly had "several days" to reply, the scope of the charges was in the record, and the Company alluded to no peculiar facts which would make the assertions more prejudicial here than they appear on their face, these objections appear to quarrel only with the Regional Director's conclusions.<sup>4</sup>

The Company also objected that the Union had distributed a "sham" letter accusing the plant superintendent of misconduct, a letter purportedly from the organizing committee, but bearing names of employees who had not authorized their inclusion. The Regional Director found that the two employees proffered by the Company in support of this objection had admitted either signing a list at the meeting at which the organizing committee was selected or acquiescing in being placed on that committee. The Regional Director further determined that placing the names of the organizing committee on campaign material, including the names of employees — members who had not expressly authorized their identification with this letter — "cannot be said to be improper electioneering." In its exceptions, the Company reiterated its assertion that including these names was improper without challenging the Regional Director's findings. Finally, the Company objected that employees had engaged in a slowdown, but the Regional Director found that such conduct by union adherents, not properly attributable to the Union, would not constitute interference. The Company apparently objected to the Regional Director's conclusion but raised no factual issue in this connection.

Thus, while the exceptions clearly indicate "that there is disagreement with the Regional Director and that the objector's contentions can be

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<sup>4</sup> As we show, *infra*, pp. 19, 21, 23, the statements on which the Company now relies do nothing to change that impression.

supported by evidence" (Co. Br. 19), the expressed disagreement is with the Regional Director's conclusions, which *assumed* that the Company's factual assertions are correct. Apparently, however, the Company contends (Br. 19) that the Board was obligated to accept the materials submitted to the Regional Director, and having done so, to resolve any factual issue they may raise whether or not these issues were raised in the exceptions. As an extension of this argument, the Company contends (Br. 19-20) that these issues may be pointed out for the first time to this Court and if they were in fact supported by the evidence, the Board should be reversed. The Board contends, however, that in the absence of exceptions showing that the objections cannot be disposed of without resolving "substantial and material questions of fact" the actual existence of such issues is irrelevant. It is in this context that the issue of whether these materials should be part of the record is before this Court.

We submit that the principle for which the Company contends is contrary to settled law. Thus, if the Company could now raise a substantial and material factual issue supporting its allegation by a statement somewhere in its materials, such a belated compliance with the Board's procedures cannot establish reversible error of the Company's case. As stated by the Supreme Court in *U.S. v. Tucker Truck Lines, Inc.*, 344 U.S. 33, 37 (1952):

Simple fairness to those who are engaged in the tasks of administration and to litigants, requires as a general rule that courts should not topple over administrative decisions unless the administrative body not only has erred, but has erred against objection made at the time appropriate under its practice.

See also, *Glazier's Local 558 v. N.L.R.B.*, U.S. App. D.C. F.2d (Nos. 21,781 and 21,883, January 23, 1969, 70 LRRM 2348); *N.L.R.B. v. Rexall Chemical Co.*, 370 F.2d 363 (C.A. 1, 1967); *N.L.R.B.*

*v. Air Control Products of St. Petersburg, Inc.*, 335 F.2d 245, 252 (C.A. 5, 1964).<sup>5</sup>

The contention that the Board should review all materials submitted to the Regional Director is also contrary to Congressional intent. The Board's practice in post-election proceedings of reviewing only the Regional Director's report and the exceptions to it is of long standing.<sup>6</sup> In 1959, Congress amended Section 3(b) of the Act to allow the Board to delegate pre-election determinations to the Regional Directors, with very limited review, to speed the Board's processing of representation cases. See Fed. Reg. 3885, *et seq.*: H. Rept. No. 741, 86th Cong., 1st Session, pp. 17-18; 105 Cong. Rec. 18, 128. Since some 8,000 elections are conducted by the Board annually, including some 1,200 involving objections or challenges,<sup>7</sup> a

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<sup>5</sup> Contrary to the Company's suggestion (Br. 19-20), *Sonoco Products Co. v. N.L.R.B.*, 399 F.2d 835 (C.A. 9, 1968) does not stand for the proposition that evidence alone is a substitute for appropriate pleading. There the Regional Director summarized the proffered evidence, but declined to consider it on the ground that it was time-barred, an issue which Sonoco's exceptions clearly raised.

<sup>6</sup> Since materials submitted to the Regional Director are not submitted to the Board, they are not part of the "entire record in this proceeding" as contemplated by Section 9(d) of the Act. *Kearney & Trecker Corp. v. N.L.R.B.*, 209 F.2d 782 (C.A. 7, 1953). Accord: *Intertype Co. v. N.L.R.B.*, 401 F.2d 41, 43-45 (C.A. 4, 1968). When the Company sought to make these materials part of the record in the unfair labor practice proceeding, the Trial Examiner denied the motion on the ground that they would be certified under Section 9(d) (A. 21-22; see also 108-109). The Trial Examiner clearly was under a misapprehension as to either the actual nature of the materials proffered by the Company — since other materials from the representation case were certified — or the Board's practice in this respect. His ruling was correct, however, because these materials would be appropriately offered in the unfair labor practice case only if they were erroneously excluded in the representation case. See cases cited, *supra*, p. 8. Accordingly, the Company's charge (Br. 23) of "duplicity" in this respect is unfounded.

<sup>7</sup> Thirty-Second Annual Report of the National Labor Relations Board, p. 235.

requirement that the Board review post-election determinations *de novo* would work a substantial delay.

Contrary to the Company's assertion (Br. 23-24), the contention that the Board need not review all such records does not affect the Company's "basic right to be heard" so long as the Company files exceptions which fairly present any factual issues. It is worth noting in this connection that the Company submitted over 1200 pages of transcript and hundreds of pages of exhibits to the Regional Director in support of the objections and challenges. Unlike the Company's brief to the Court, the exceptions make no attempt to relate these materials to any specific contention, and the brief refers to less than 200 pages of transcript and none of the exhibits. Thus, only in the brief to this Court is there any suggestion that the materials did anything more than support the Company's claim accepted by the Director that the Union's statements were false and that the mechanics had the duties found by the Director. Moreover, in its brief the Company offers only about 10 percent of these materials as relevant for consideration in any event. As these circumstances make clear, the evidence itself was no substitute for exceptions.

Similar considerations control the Company's contention (Br. 24) that Section 102.69(f) — which describes the record in a post-election proceeding as including, among other things, "briefs or other documents submitted by the parties to the Regional Director" — requires the inclusions of such materials. The reference clearly is to other documents in the nature of briefs — points and authorities, memoranda, and other materials, however labelled, which offer supporting arguments. Such a reading is apparent, not only from the context, but also from the failure to provide for the inclusion of affidavits taken by the Regional Director himself in the course of the investigation, normally the largest category of documents, and clearly necessary if the Board were making a *de novo* review of the record. Moreover, the

Board has "discretion to interpret its own rules" (*N.L.R.B. v. Giustina Bros. Lumber Co.*, 253 F.2d 371 (C.A. 9, 1958), and as noted, *supra*, p. 12, n. 6, its practice in this respect is long standing and is reflected in published decisions. In any event, since the Board's rules unquestionably called for exceptions, the Company's contention that it reasonably believed that the evidence alone would be an adequate substitute for exceptions is clearly unwarranted.<sup>8</sup>

### C. The Board properly rejected the Company's objections

The Board has properly exercised caution in setting aside elections because of inaccurate campaign propaganda. "In exercising its discretion in the area of misrepresentations during election campaigns, the Board uses three criteria: (1) Is the misrepresentation of a material fact? (2) Did the misrepresentation come from a party who has special knowledge of the true facts? And (3) did the opposing party have sufficient opportunity to correct the misrepresentation." *United Steelworkers of America, AFL-CIO (Luxaire, Inc.) v. N.L.R.B.*, U.S. App. D.C., 393 F.2d 661, 664 (1968). Accord: *N.L.R.B. v. Bata Shoe Co.*, 377 F.2d 821, 829 (C.A. 4, 1967), cert. denied, 389 U.S. 917; *Anchor Mfg. Co. v. N.L.R.B.*, 300 F.2d

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<sup>8</sup> In *Southwestern Portland Cement Co. v. N.L.R.B.*, F.2d (C.A. 5, No. 25,791, February 10, 1969, 70 LRRM 2536, 2538), the court held that "the affidavits in question are certainly 'other documents submitted by the parties to the Regional Director'" without adverting either to the immediate context of that phrase or the Board's uniform and contrary interpretation of its own rules.

The court went on to hold, however, that "nothing of relevance [was] asserted in the affidavits that was not alleged in the Company's exceptions" and that what was raised in the exceptions did not raise a substantial and material question of fact. The court's disposition of the case, therefore, avoided the difficulty inherent in finding, as the Company urges here, that such materials must be examined by the Board for possible factual issues not raised by the exceptions themselves. As noted above, unless this burden is imposed on the Board, the physical inclusion of these materials in the record would not be significant.

301, 303 (C.A. 5, 1962); *N.L.R.B. v. Allen Mfg. Co.*, 364 F.2d 814, 816 (C.A. 6, 1966). See also, *Linn v. Plant Guard Workers*, 383 U.S. 53, 60 (1966) citing *Hollywood Ceramics Co.*, 140 NLRB 221, 223-224 (1962).<sup>9</sup>

The Board does not view as falling within the category of substantial misrepresentations, statements which are ambiguous, vaguely worded, exaggerated, merely derogatory or involving, at most, only a minor distortion of some facts. Moreover, "even where a misrepresentation is shown to have been substantial, the Board may still refuse to set aside an election if it finds upon consideration of all the circumstances that the statement would not be likely to have had a real impact upon the election." *Hollywood Ceramics Company, Inc.*, *supra*. A principal example of such a situation is the case where the employees possess independent knowledge with which to evaluate the statement. Another factor in judging impact is whether the party making the statement possessed intimate knowledge of the subject matter so that the employees sought to be persuaded may be expected to attach added significance to it. See *Anchor Mfg. Co. v. N.L.R.B.*, *supra*. "The ultimate consideration is whether the challenged propaganda has lowered the standards of campaigning to the point where it may be said that the uninhibited desires of the employees cannot be determined in an election." *The Gummed Products Company*, 112 NLRB 1092, 1094 (1955). Accordingly, the Board has properly exercised caution in setting aside elections because of inaccurate campaign propaganda and has long applied a flexible test

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<sup>9</sup> Dean Bok urges skepticism about the effect of misleading assertions of fact on the outcome of elections, suggesting that the determining factors are much more general — for example: Is the employer hostile to the union? Is the union really interested in my problems? What will the other workers in my section do?— while the factual assertions — if read — provide rationalizations for decisions already reached on other grounds. Bok, *Regulation of Campaign Tactics in Representation Elections under the National Labor Relations Act*, 78 Harv. L. Rev. 38, 88-90.

by which, as it said in *Hollywood Ceramics Company, Inc.*, 140 NLRB 221, 224 (1962), it will set aside an election:

only where there has been a misrepresentation or other similar campaign trickery, which involves a substantial departure from the truth, at a time which prevents the other party or parties from making an effective reply, so that the misrepresentation, whether deliberate or not, may reasonably be expected to have a significant impact on an election.

This test has been approved by this and other courts. *Anchor Mfg. Co. v. N.L.R.B.*, 300 F.2d 301, 303 (C.A. 5, 1962); "the basic issue is whether such false statements as may have been made *in fact* constituted an interference with a free choice of bargaining representatives; it is obvious that every false statement does not." Accord: *United Steelworkers of America v. N.L.R.B.*, U.S. App. D.C. , 393 F.2d 661, 664 (1968); *N.L.R.B. v. Dallas City Packing Co.*, 251 F.2d 663 (C.A. 5, 1958); *Baumritter Corporation v. N.L.R.B.*, 386 F.2d 117, 119-120 (C.A. 1, 1967); *General Electric Co., Specialty Control Dept. v. N.L.R.B.*, 383 F.2d 152, 153 (C.A. 4, 1967); *N.L.R.B. v. Allen Manufacturing Co.*, 364 F.2d 814, 816 (C.A. 6, 1966); *N.L.R.B. v. Louisville Chair Company*, 385 F.2d 922, 927 (C.A. 6, 1967), cert. denied, 390 U.S. 1013; *Macomb Pottery Company v. N.L.R.B.*, 376 F.2d 450, 453 (C.A. 7, 1967); *N.L.R.B. v. Red Bird Foods, Inc.*, *supra*.

#### 1. The accusation of employer misconduct

On October 21, a week before the election, the Union mailed employees an open letter to Company President Hussey, signed by a union official, and a circular over the names of the Organizing Committee, both of which accused Plant Superintendent Auer of threatening to close the plant or take away the employees' Christmas bonus and smoking privileges if the Union

won the election. The materials further accused Auer of unlawfully interrogating and spying on employees, stated that such conduct was "disgraceful" and "illegal" and called upon President Hussey to repudiate Auer's actions. The Regional Director found that such accusations were not "objectionable on their face" — that is, they did not amount to material misrepresentations — and that in any event the Company had "ample time to reply."

As suggested above (p. 16), the Board does not undertake to "police or censor propaganda used in the election it conducts, but rather leaves to the good sense of the voters the appraisal of such matters, and to the opposing parties the task of correcting inaccurate and untruthful statements." *Stewart-Warner Corporation*, 102 NLRB 1153, 1158 (1953), quoted in *Linn v. United Plant Guard Workers of America, Local 114, et al.*, 383 U.S. 53, 60-61 (1966). The Board, however, has imposed some limits on pre-election propaganda. "Some untruths may be so glaring that the Board ought not to overlook them. . . . On the other hand, not every inaccuracy in election campaign propaganda requires the Board to intervene and set aside an election. The question is one of both degree and context." *Follett Corporation v. N.L.R.B.*, 397 F.2d 91, 95 (C.A. 7, 1968); *N.L.R.B. v. Red Bird Foods, Inc.*, *supra*.

The Company contends (Br. 53-57) that the accusations "were timed and phrased in such a manner that a mere denial by the Company would have succeeded only in giving greater credence to the accusations." The Company had a week to reply, however, and contrary to the Company's suggestion (Br. 54), such an accusation cannot be equated to attributing to Auer a desire to see pro-union employees "tied and burned to death" (*Schneider Mills, Inc. v. N.L.R.B.*, 390 F.2d 375 (C.A. 4, 1968) — that is, they were not inflammatory in nature. Moreover, the Union had reason to believe that *someone* was spreading rumors; attributing the remarks to Auer,

while pointing out that the Company could not lawfully engage in the rumored retaliation and seeking Company repudiation, was a way of combating the rumors. In any event, no reason appears why a statement denying any misconduct by Auer and, more important, expressly disavowing any intention of retaliating against employees would not have been effective.<sup>10</sup>

Nor did the inclusion of the names of the organizing committee make the charges "extremely difficult for the Company to counter" (Co. Br. 54). The organizing committee, while employees, were identified as partisans in the election, and in any event, the Company could have countered the effect of their inclusion by questioning them about the basis for the assertions.<sup>11</sup> The Company's real contention seems to be that where an employer wishes to sit out the election, the Board should honor the employer's wishes and relieve it of any obligation to provide balanced information. We submit that the Board is not compelled to provide such a double standard, and properly concluded "that the Company had had adequate time to answer the Union's misrepresentations and, accordingly, refused to set aside the election." *Lynch & Co. v. N.L.R.B.*, F.2d (C.A. 5, No. 26,259, December 19, 1968, 70 LRRM 2217). Even if the Company's failure to reply did not estop it from raising the issue now, the silence indicates that at the time the Company regarded the Union's statements as innocuous, as the Board found.

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<sup>10</sup> *Crystal Laundry & Dry Cleaning*, 132 NLRB 222, n. 1 (1961); *Fleetwood Trailer Co.*, 118 NLRB 1355, 1356 (1957); *F.W. Judge Optical Works, Inc.*, 78 NLRB 385, 386-387 (1948); *Marr Knitting, Inc.*, 90 NLRB 479, 480 (1950).

<sup>11</sup> An employer may question employees in order to secure needed information as long as he restricts himself to questions relevant to a proper purpose and advises employees both as to the nature of that purpose and of their right to answer or refuse without fear of retaliation. See *Retail Clerks International Association, AFL-CIO (Montgomery Ward) v. N.L.R.B.*, 125 U.S. App. D.C. 389, 373 F.2d 655 (1967); *Joy Silk Mills v. N.L.R.B.*, 87 U.S. App. D.C. 360, 371, 185 F.2d 732 (1950), cert. denied, 341 U.S. 914; *Patent Trader*, 167 NLRB No. 120 (1967), 66 LRRM 1186.

The Company's assertion that the Board's scrutiny of the materials submitted to the Regional Director would substantially enhance this objection is unfounded. Rather, this evidence shows three employee members of the organizing committee came to Auer and disavowed any assertion of misconduct on his part. (See Co. Br. 6). One of these employees came to Auer *before* the letter was actually mailed and two almost immediately afterward (A. 406-407, 412-413, 428-429). Thus, the Company had ready information to counter the charge, but declined to do so.

In the alternative, the Company argues (Br. 56) that by the "Union's own admission" rumors concerning loss of benefits or plant closure were widespread and therefore the election should be set aside — even though Company officials could not be identified as the source of these rumors — because of the resultant "atmosphere of fear and anxiety." The Regional Director rejected the Union's objection in this connection, however, noting that the Union "proffered several witnesses who testified at some length as to various casual conversations with fellow employees" concerning such rumors, without offering any evidence that the Company was responsible. As the Company notes (Br. 56-57), in determining whether conduct has created an "atmosphere of fear of reprisal such as to render a free expression of choice impossible" (*Manning, Maxwell & Moore, Inc. v. N.L.R.B.*, 324 F.2d 857, 858 (C.A. 5, 1963), the Board does not disregard conduct which cannot be attributed to either party. But in assessing the probable impact on an election, since it is less likely to influence employees and it is harder to control, "less weight" is given to such conduct. *Orleans Mfg. Co.*, 120 NLRB 630, 633 (1958). Accordingly, an election will be set aside on the basis of such conduct, only if it "is so glaring that it is almost certain to have impaired [the] employees' freedom of choice." *General Shoe Corp.*, 77 NLRB 124, 126 (1948). See also, *Manning, Maxwell & Moore, supra*, 324 F.2d at 858. Of course, the Union's "admission"

as to rumors is not binding on the Regional Director, and his finding that the evidence was insufficient "to justify setting the election aside" is not challenged by the Company on any other basis.

## 2. The bonus and the slowdown

The Company contends (Br. 46-52) that by pointing out in its election leaflets that the employees' bonuses had risen in the weeks immediately following the election petition, the Union had implied that the Company was manipulating the bonus and that this implication was unfounded. The Union's assertion, however, depended entirely on the *fact* of the increase — which is undisputed — and as the Company points out, the bonus was computed by a fixed formula applied to production, and hence went up because production went up. Accordingly, the statement would not constitute a material misrepresentation because employees may be presumed to have "sufficient knowledge of their own working conditions so as not to be materially misled." *N.L.R.B. v. Bata Shoe Co.*, *supra*, 377 F.2d at 830. This distinction between misstatements about an employee's own working conditions, and misstatements about working conditions that the union has assertedly won elsewhere, about which the employee is ignorant and the union apparently well-informed, has been repeatedly recognized. See, for example, the differing treatment of the two types of misrepresentation in *N.L.R.B. v. A.G. Pollard Co.*, 393 F.2d 239 (C.A. 1, 1968), distinguishing *N.L.R.B. v. Trancoa Chemical Corp.*, 303 F.2d 456 (C.A. 1, 1962) on which the Company relies (Br. 51, 55). See also, *Macomb Pottery v. N.L.R.B.*, *supra*, 376 F.2d at 453; *N.L.R.B. v. Louisville Chair*, *supra*, 385 F.2d at 927.

Indeed, the Company asserts (Br. 6, 49) that the older employees were aware that the bonus was being paid normally, and that many employees were aware that production had been low prior to the petition.

The Company offers no reason to believe that any employee would be ignorant with respect to matters of such importance to his livelihood. Even if some employees did not know how they were paid, the Company had an ample opportunity to respond to the Union's assertion. The asserted "complexity" of the formula (Co. Br. 49) was irrelevant to the only point which the Company had to make — that the formula was fixed and the rise in payments represented a rise in production.

The Company also contended that union adherents had engaged in a slowdown — that is, a refusal to earn maximum incentive payments — in August, September, and early October (A. 181). The Regional Director found that assuming that such conduct were shown, it could not be attributed to the Union, and as noted above (p. 19), conduct by rank-and-file employees will be regarded as interference only if it clearly would have a substantial impact on the election. We submit that a slowdown would have no discernible impact on an election, and aside from the bald statement (Br. 52) that the "election had to be set aside on this ground," the Company offers no explication of its asserted effect.

Nor does the material submitted to the Regional Director support this contention. The Company now contends (Br. 7) that this conduct was not simply the action of union adherents, as the Regional Director found, because "[s]everal employees testified. . . that during the prior period [before the election] the Union had caused a slowdown of the production line . . . ." The references for this assertion, however, support only the Regional Director's finding that the evidence suggests at most that some union adherents had engaged in a slowdown.<sup>12</sup>

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<sup>12</sup> Gene Hill stated (A. 416) that "they [unidentified employees] slowed it down, just tried to get the Union in or something. I don't know what." Arthur Lea stated (cont'd.)

In an apparent effort to use the above contentions to bolster each other, the Company now contends that the Union had caused the earlier slowdown so that it could point to a dramatic rise in bonus just prior to the election. The Company further asserts that since it was unaware of the Union's role, it was unable to make the most effective reply to the Union's assertion concerning the bonus. This argument depends *entirely*, however, on a showing of Union responsibility for a slowdown, and the Company has offered no evidence in support of such a contention, as noted above. Indeed, the statements discussed above attribute an entirely different motive to the responsible employees, and other circumstances make the contention even less plausible. Thus, the Union could have so engineered this modest rise in the bonus only by previously sacrificing the incomes of its adherents, and the Company could still have effectively refuted the Union's claim to have increased the bonus simply by showing that it was due to increased production. The results thus would not have been worth the effort. Moreover, when the Union in its objections accused the Company of raising the bonus to forestall unionization, the Company pointed out to the Regional Director that the rise in the bonus between the petition and the election was well within the normal range — a maximum one-week

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<sup>12</sup> (cont'd). (A. 420) that unidentified employees had engaged in a slowdown "all summer" — that is, "ever since they decided they wanted a Union. . . ." Elden Sutter stated (A. 424-425) that the slowdown started in the "spring [1966]" because "the fellows thought they ought to have a higher bonus rate [and] that Mr. Hussey [the Company president] would raise their bonus. . . if they had to have the trailers in order to get the trailers they would raise the bonus rate." Harold Geiger stated (A. 427-428) that "if the boys had wanted to produce, we could have had as much as we made a year ago" but "they said so many a day was enough." Charles Lantz stated (A. 431-432) that he felt the employees could have had a bigger bonus if "they had buckled down and worked." Lavern Becher stated (A. 436) his view that "this summer we could have made just as much as last summer if everybody had worked." The Company's questioning not only failed to elicit the identity of those responsible, but also expressly disclaimed any interest in having the responsible employees identified (A. 419-420, 431).

increase of less than 45 percent compared with a one-week increase of 200 percent the previous year (A. 466), thus refuting the existence of any extraordinary effort to raise the bonus. The same Company materials also suggest an alternative reason for reduced production — a high turnover of employees (*ibid.*).

### 3. The waiver of initiation fees

In its campaign literature, the Union advised the employees that it had secured authorization cards from a majority of the employees and outlined its policies concerning initiation fees — a maximum of \$10 (A. 196, 203).<sup>13</sup> The Company contends (Br. 57-59) that the Union did not actually have a card majority and that the statements concerning the waiver of initiation fees could have been “read as requiring a ‘yes’ vote in order to obtain the waiver of initiation fees.”

Where a union’s majority status depends on the validity of authorization cards, a showing that the cards were secured through misrepresentations or other improper conduct may invalidate the cards and hence the union’s majority status.<sup>13a</sup> Where the designation of the union is by “a secret ballot, conducted under Government sponsorship and with all the safeguards which have developed throughout the years” (*The Liberal Market, Inc.*, 108

<sup>13</sup> In a leaflet distributed on October 21:

SPECIAL NOTE: Any employee who signs an IUE card before next Friday will be a charter member of the Union and will not be required to pay the initiation fee . . .

Sign your card today. . . and . . . VOTE “YES” ON OCTOBER 28.

<sup>13a</sup> Cf. *Amalgamated Clothing Workers (Sagamore Shirt) v. N.L.R.B.*, 124 U.S. App. D.C. 365, 365 F.2d 898, 908 (1966) (false claim of majority “does not vitiate cards unless the comments were a means of coercing employees to sign cards out of a fear of majority reprisal.”)

NLRB 1481, 1482 (1954)), however, representations which were made to secure authorization cards but which do not inhibit an employee's expression of his free choice on the ballot are not material. We submit that the representations involved here were clearly in that category.

A waiver of initiation fees does not "in and of itself interfere with an employee's freedom of choice." *N.L.R.B. v. Gafner Automotive & Machine Co.*, 400 F.2d 10, 12 (C.A. 6, 1968). See also, *Amalgamated Clothing Workers of America v. N.L.R.B.*, 345 F.2d 264, 268-269 (C.A. 2, 1965); *N.L.R.B. v. Taitel*, 261 F.2d 1, 4 (C.A. 7, 1958), cert. denied, 359 U.S. 944. At one time, however, the Board held that where a waiver of initiation fees was dependent on a "yes" vote, such a waiver would invalidate the election. (*Lobue Bros.*, 109 NLRB 1182 (1954)), a view which was accepted by the Sixth Circuit in *N.L.R.B. v. Gilmore Industries*, 341 F.2d 240 (C.A. 6, 1965). In *N.L.R.B. v. Gorbea, Perez & Morell, S. en C.*, 328 F.2d 679, 682 (C.A. 1, 1964), although dealing with the validity of authorization cards where the union had "waived" an initiation fee when in fact none was imposed, the court observed by way of *dictum* that cards solicited by an improperly conditioned waiver of dues could impugn an election.<sup>14</sup>

The Company's assertion (Br. 57-59) that the Union's waiver of initiation fees in this case was conditioned on the Union's winning the election is clearly unfounded, since the waiver was extended to all who signed before the election. Moreover, the Board has reconsidered its holding in

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<sup>14</sup> In an earlier decision in the same matter, the court accepted the distinction between a card designation and a vote, noting that a "man might sign a union card as a hedge if it cost him nothing, and yet on a secret ballot not vote for the union. . . ." 300 F.2d 886, 888 (C.A. 1, 1962).

In the second decision, the Court observed that "on reflection it seems to us that as a matter of common sense a union with cards in its pocket must regard the outcome of an election more hopefully than would one which had failed to obtain them." 328 F.2d at 682, n. 6.

*Lobue*, and reversed that decision on grounds which impugn the rationale of *Gilmore* and answer the First Circuit's *dictum* in *Gorbea* as well. Thus, in *DIT-MCO, Inc.*, 163 NLRB No. 147 (1967), 64 LRRM 1476, the Board held that even where a waiver is expressly based on the union's winning the election, "an employee must recognize that as a practical matter the waived or reduced initiation fee can become of value to him only if the Union wins the election". In the Board's view, an employee who signed an authorization card to save money — that is, to avoid paying an initiation fee — will be free to vote against the union, knowing that he will save dues and lose nothing of value — that is, free membership in a union he does not want — if the union loses and will not have to pay an initiation fee if the union wins. "Thus, whatever kindly feeling toward the union may be generated by the cost-reduction offer, when consideration is given only to the question of initiation fees, it is completely illogical to characterize as improper inducement or coercion to vote 'Yes' a waiver of something that can be avoided simply by voting 'No.' " *DIT-MCO, supra*.<sup>15</sup> We submit that the Board's determination with respect to the impact of such a waiver on an employee's free choice in an election lies clearly within its discretion, and hence the Board properly rejected the Company's contention.

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<sup>15</sup> This Court's decision in *Truck Drivers and Helpers, Local Union 568 v. N.L.R.B.*, 126 U.S. App. D.C. 360, 368, n. 15, 379 F.2d 137, 145, n. 15 (1967), is not to the contrary. In that case, the Court merely noted the possibility that "A union's promise of benefit may be as disruptive of free choice as a threat, and may exert no less restraining influence," citing *Gilmore* and *Gorbea*. All union "promises of benefits," however, do not have a significant impact on free choice, as both *Gilmore* and *Gorbea* indicate. The inducement in *Truck Drivers* was, not a waiver of fees, but an offer of seniority preferences for one constituent group over another if it were selected as bargaining representative in an election.

**D. The Board properly included employees Timmons and Kleinknight in the unit and counted Timmons' ballot**

**1. The unit**

Ordinarily, the Board has wide discretion in choosing an appropriate unit. *N.L.R.B. v. Packard Motor Car Co.*, 330 U.S. 485 (1947). Where the parties have stipulated as to the bargaining unit, however, the Board does not exercise that discretion; rather, it accepts the unit to which the parties have stipulated, unless that unit is inherently inappropriate as a matter of law. See *Tidewater Oil Co. v. N.L.R.B.*, 358 F.2d 365 (C.A. 2, 1966); *N.L.R.B. v. Tennessee Packers*, 379 F.2d 172 (C.A. 6, 1967); *N.L.R.B. v. J. J. Collins*, 332 F.2d 523 (C.A. 7, 1964); *N.L.R.B. v. Joclin Mfg. Co.*, 314 F.2d 627 (C.A. 2, 1963).

In the present case, the Regional Director apparently determined the unit placement of the mechanics as if he were called upon to make a discretionary determination according to their community of interest and excluded them. The Board disagreed with his conclusion, and determined that the subject employees were clearly within the stipulated unit. Since the Board further determined that the inclusion of garage mechanics in a production and maintenance unit "is not inappropriate as a matter of law" the Board concluded that "they should be included in the unit under the terms of the parties' stipulation." The Company apparently does not quarrel with the principles which underlie the Board's decision, nor with the conclusion that the Board should hold the parties to their stipulation. Rather, the Company argues that the stipulation is clear but requires a reading precisely the opposite of that given by the Board. In the alternative, the Company argues that if the stipulation was ambiguous, the Board erroneously determined the intent of the parties.

In finding that it was "the expressed intent of the parties to exclude only those employees specifically designated therein, and to include all others" the Board noted that the unit petitioned for — including "All production and maintenance employees at the Company's *plant* in Syracuse, Indiana," — was changed by the stipulation to *include* all those in the Syracuse "*establishment*." Further, the exclusions in the petition — "All *truckdrivers*, guards, professional, technical, and salaried employees, and supervisors as defined by the Act," — was changed to *exclude* only "*mobile home haulaway drivers*." The Board found these changes "indicative of an intent to cover the entire business unit of the Employer and to exclude only those narrower categories of employees so specified," particularly since the inclusion of "local truckdrivers" in a unit of "production and maintenance employees" evidences that this unit description is meant as "a general term" Obviously, garage mechanics are more clearly encompassed by a "production and maintenance" unit than are local truckdrivers, and a garage three quarters of a mile from the main plant is clearly within the Company's Syracuse "*establishment*."

The Company relies, however, on *Phillips Co. v. Walling*, 324 U.S. 490 (1945), in which the Supreme Court held that employees in a separate warehouse serving the employer's 49 retail grocery stores were not exempt from the Fair Labor Standards Act as employees "engaged in any retail . . . establishment." After noting that the FLSA "was designed to extend the frontiers of social progress by insuring all our able-bodied working men and women a fair day's pay for a fair day's work," and that the subject employees did essentially the same work as the employees of an independent wholesaler, the Court held that "establishment" in the exemption referred to "a distinct physical place of business" rather than the employer's

"entire business or enterprise."<sup>16</sup> From this case, and those following it, the Company argues that "establishment" is judicially recognized as a more restrictive term than "plant." We submit, however, that a definition designed to effect the purposes of the FLSA is of little assistance here.

Since the garage in question was a service operation in the Company's production and distribution of trailers, the plant and the garage were a functional unit. Thus, the garage could hardly be considered a separate "establishment" since it had no other function than support of the Syracuse plant. In this context, then, the Board's conclusion that "establishment" is more inclusive than "plant" would seem beyond question, and the Company does not even contend that the exclusion of "haulaway drivers" rather than "truckdrivers" restricts the unit.<sup>17</sup>

The Company contends in the alternative (Br. 31-42) that if the stipulation did not unambiguously exclude the mechanics, the Board failed to consider, in addition to the election petition, the relative community of interest of the employees in determining the parties actual intent. We submit, however, that the petition and the stipulation are in effect a single instrument, and accordingly the Board properly gave the petition particular attention. Moreover, the Board considered the petition only for the very limited purpose of determining whether the stipulation modified the petition, and if so, whether it was changed to broaden or narrow the unit. While the Regional Director determined that the garage employees lacked an adequate

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<sup>16</sup> In the course of its opinion, the Court also noted that prior to the adoption of the FLSA, "the term 'establishment' was used in the sense of physical place of business" in reports, regulations and statutes, and as "applied to chain store systems 'establishment' thus described each store in the chain."

<sup>17</sup> The Company's contention (Br. 36) that the "Union's acceptance of the eligibility list until the last moment should estop it" from urging the inclusion of the mechanics is unfounded; the pre-election conference is the appropriate time to raise such questions.

community of interest to warrant their inclusion in the unit on that basis, his factual findings were before the Board — together with what the Company chose to add. As we note below, these facts do not show such a divergence of interest as to require the Board to find that the parties could not have intended what the Board read in the very words of the stipulation. See 4 Williston on Contracts (3d ed.) § 609.

The considerations discussed above are determinative of the Company's contentions. As noted above, where the parties stipulate as to the unit, they do not invoke the Board's discretion, and the Board will accept lawful units, agreed to by the parties, even though they may not represent the precise unit which the Board would have found. Cf. *Dixie Bell Mills, Inc.*, 139 NLRB 629, 630, n. 2 (1962); *Raleigh Coca-Cola Bottling Co.*, 80 NLRB 768, 770 (1948). Accordingly, the question with respect to the community of interest is, not whether they have a sufficient community of interest to require their inclusion on that ground alone, but whether they have so little in common as to make their inclusion inherently inappropriate. As the Regional Director found (A. 185), the mechanics are hourly rated employees who receive the same vacation, paid holiday, and insurance payments as the hourly rated plant employees. While they do not share in the production bonus, their pay is comparable to that of the plant maintenance man, including his bonus, and the plant maintenance man was used as a substitute for a mechanic when he was sick for three weeks in early 1965 (A. 185).

The Board has included garage mechanics in a production and maintenance unit, while allowing the exclusion from the unit of the drivers of the trucks which they service. (See for example, *American Linen Supply Co.*, 129 NLRB 993, 995 (1960). Of course, that is the result here. Moreover, where appropriately expressed, "the wishes of employees are a factor in a Board conclusion upon a unit." *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 156 (1941); *N.L.R.B. v. Underwood Machinery Co.*, 179 F.2d

118, 121 (C.A. 1, 1949); *N.L.R.B. v. Botany Worsted Mills*, 133 F.2d 876, 880 (C.A. 3, 1943), cert. denied, 319 U.S. 751. Although employee sentiment was not a factor in the Board's determination here, that determination was confirmed by the mechanics' vote (see *infra*, p. 32). Similarly, the Company's contention (Br. 34-35) that the Board, if exercising its discretion, would exclude these mechanics as managerial employees does not involve a statutory directive, for managerial employees are not mentioned in the Act. Since the garage mechanics are arguably managerial employees principally because they order their own parts — that is, they are neither privy to higher managerial decisions nor otherwise identified with interests opposed to those of the other employees in the unit — the Board's decision that their inclusion in a stipulated unit does not render the unit "inherently inappropriate as a matter of law" is clearly correct. Cf. *N.L.R.B. v. Schapiro & Whitehouse*, 356 F.2d 675, 676 (C.A. 4, 1966).

## 2. The ballots

This Court has recognized "the rule that a marking which appears to have been deliberately made and which may serve to identify the voter renders the ballot void." *N.L.R.B. v. National Truck Rental Co.*, 99 U.S. App. D.C. 259, 263, 239 F.2d 422, 426 (1956), cert. denied, 352 U.S. 1016. The Court there approved the Board's holding that to count such ballots would "clearly open the door to the exertion of influence such as to prevent the exercise of the voter's free choice." *Burlington Mills Corp.*, 56 NLRB 365 (1944). In the present case, the corners of Kleinknight's ballot were torn off and Timmons' name was written on the main portion of the challenged ballot envelope, rather than on the detachable stub. Although Kleinknight's ballot was not counted, the Company contends that under the facts here, since his ballot was identifiable, Timmons' ballot was identifiable as the other one and hence was void.

The Company's contention is based on a misconception of the rule, which voids the ballot, not because it can be determined how a person voted, but because the voter apparently *wanted* to be identified with his vote. The policy clearly is not to protect the voter from disclosure as to how he voted, for it is operative only when the mark appears to have been made *deliberately*. Moreover, the remedy of voiding a challenged ballot once it had been determined how the voter cast his ballot would in no way reassure the voter that the secrecy of his ballot would be maintained. Rather, the rule reflects that the vice in ballots marked for voter identification is that the marks make it possible for the *voter* to assure one of the parties that he voted "right". Or, as expressed in Down Eastern language (*Frothingham v. Woodside*, 122 Me. 525, 120 A. 906, 911 (1923), cited in *National Truck, supra*, at n. 10): "Purchasable voters could readily prove their agreed-upon compensation."

Obviously, a voter who casts his ballot to please one of the parties is not exercising his free choice, and the Board treats deliberately marked ballots as presumptively cast for this purpose. But this policy does not require the voiding of ballots simply because the identity of the voter is discovered. Thus, consistent with the rationale set out above, the Board holds that it is "not necessary to establish the identity of the voter who cast the disputed ballot," (*Ebco Mfg. Co.*, 88 NLRB 983, 984 (1950)), but that identification placed on the body of the challenged ballot envelope — rather than entirely on the stub — does not void the ballot (*N.A. Woodworth Co.*, 115 NLRB 1263, 1265 (1956)).<sup>18</sup> Accordingly, the Board

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<sup>18</sup> The holding in *N.L.R.B. v. Ideal Laundry and Dry Cleaning Co.*, 330 F.2d 712, 718-719 (C.A. 10, 1964) that the independent discovery of how a challenged voter cast his ballot does not render irrelevant the fact that he had marked the ballot for identification supports our contention that it is the marking, not the identification, which is significant.

properly determined that the identification of Timmons' ballot, which was made possible through circumstance, did not void his vote for the Union.

II. FOLLOWING THE CERTIFICATION OF THE UNION, THE COMPANY  
DISCRIMINATORILY DISCHARGED EMPLOYEE NEWBY AND COER-  
CIVELY INTERROGATED AND THREATENED EMPLOYEES

A. Newby's discharge

On August 17, 1967, the Union wrote the Company requesting a meeting to begin collective bargaining (A. 263), and about a week later, employee Willis Newby, who had distributed handbills seven or eight times before the election, passed out union handbills to the employees as they left the plant (A. 41, 159). These handbills, which announced the Union's certification, its request for recognition, and plans for organizing and recruiting membership for Local 800 of the IUE, were issued over the names of a nine-man Administrative Committee, including Newby; his name as a member of the Organizing Committee (A. 264, 196, 158) had also appeared on the campaign material. On August 25, Company President Hussey responded with a letter (A. 154) to the individual employees, expressing his resentment concerning the Union's campaign and his plans for future action: "I haven't talked to it and I will not. We will proceed to obtain a hearing in the courts." With respect to the Union's membership campaign, Hussey stated: "Don't be fooled and don't let it fool your friends" and closed with the request, "I would appreciate the confidence of you and your family."

On August 30, a fire at the plant forced a shutdown, and President Hussey advised employees that he wanted to resume production by Friday but "would probably have to shoot for [the following] Tuesday," September 5 (A. 295; 85). The plant reopened on September 5, and when Newby had

not reported by 10:30 a.m., President Hussey personally ordered that Newby's timecard be pulled (A. 295; 135). When Newby called in that afternoon about 2:00 and asked if the plant was working Superintendent Warren replied that it was and that Newby had been discharged (A. 295; 53, 143).

It is undisputed that Newby never had an unreported absence during his 18 months with the Company (A. 296; 59, 72), and that other employees who were absent without calling in — before and after Newby's absence — had received a warning slip at most (A. 297; 37, 82-83, 99-100, 161-163). In a case almost identical to Newby's, employee Pinkerton was absent on October 30 and did not call in until the afternoon to explain his absence, but he was given only a "first written warning" (A. 297; 164-165).

The Company contended, however, that the admittedly disparate treatment of Newby was occasioned, not by his handbilling employees in the Union membership campaign which President Hussey opposed, but because of the particular importance which the Company placed on resuming production after the fire during its busy season.<sup>19</sup> As the Board noted (A. 297-298), the Company must have known that the stated intention on Wednesday to try to reopen the following Tuesday could have been

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<sup>19</sup> The Trial Examiner accepted this circumstance as rebutting an inference of discriminatory motivation, but he did not advert to all of the factors considered by the Board in making a contrary inference (A. 265). In any event, the Board did not overturn his credibility determinations, and the propriety of drawing an inference of unlawful motivation is a matter "where the presumptively broader gauge and experience of the members of the Board have a meaningful role" and it is "they who have been given statutory responsibility." *Oil, Chemical and Atomic Workers v. N.L.R.B.*, 124 U.S. App. D.C. 113, 115-116, 362 F.2d 943, 945-946 (1966). Accord: *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 493-494 (1951); *Wheeler v. N.L.R.B.*, 114 U.S. App. D.C. 255, 258, 314 F.2d 260, 263 (1962).

regarded by an employee as a tentative projection and that the unreported absence of only one of 200 employees could hardly have represented a truly detrimental setback to the Company. Finally, the abrupt decision to terminate Newby at 10:30 a.m. for "lack of interest" — admittedly without knowledge as to either why he was not there or why he had not called — "rings hollow" when the Company admittedly needed experienced workers and Newby was both experienced and previously reliable.

The Company concedes the force of this argument, but contends that it discharged a nonunion employee — Amos Yoder — under identical circumstances.<sup>20</sup> Several days before September 5, however, Yoder had told another employee at the plant that he was quitting; the employee said he would tell Yoder's supervisor, Charles Hoover (A. 295, n. 2; 77, 86-88, 94), and two employees testified that Yoder's card was not in the rack at any time on September 5 (A. 295, n. 2; 79-82, 96-99). Moreover, Superintendent Warren admitted that when in need of a roofing man on September 5, he tried to call Newby but did not try to call Yoder (A. 295, n. 2; 143-144, 147-148). Accordingly, the Board rejected the Company's contention that it was unaware of Yoder's having quit and hence the contention that Yoder was treated identically with Newby. Without this support, nothing remains in the record but the Company's abrupt discharge of this outstanding union activist immediately after the president of the Company had expressed his hostility towards the conduct in which Newby was openly engaged. On this record, the Board was clearly justified in finding that

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<sup>20</sup> The Company also argues (Br. 65) that "Newby was only one of a large number of employees who were on the Union's organizing and administrative committees and it has not been shown that he was in any way one of the more active union adherents." Aside from the evidence of Newby's handbilling (*supra*, p. 32) he was one of *five* employees who were on both the organizing and the administrative committees (A. 158, 160).

Newby was discharged in reprisal for these activities in violation of Section 8(a)(3) and (1) of the Act. Cf. *Sterling Aluminum Co., v. N.L.R.B.*, 391 F.2d 713, 723 (C.A. 8, 1968); *N.L.R.B. v. Baker Hotel of Dallas, Inc.*, 311 F.2d 528, 533 (C.A. 5, 1963).

### B. Threats and interrogation

About a week after Newby's discharge, Vice President Weaver talked to employee Larry Giengerich in Weaver's office. Weaver asked Giengerich about the "guys that were in [the Union]" and Giengerich mentioned Graff, Rapp, and Campbell, who were "on the committee" (A. 298; 116). About two weeks later, Superintendent Warren, in a discussion with employee Schrock about the Union, stated that President Hussey had been in the mobile home business too long and would do something to discourage the union committee and the employees (A. 299; 109-110, 112-113).<sup>21</sup> About a month later,<sup>22</sup> Schrock asked Warren for time off to go to the doctor, explaining that he could not go after work because of another appointment. When Schrock admitted under questioning that his other appointment was a union meeting, Warren observed that if Schrock went down there, he was "the craziest fool at Liberty Coach." (A. 299; 110-111, 114). We submit that, accompanied by President Hussey's own contemporaneous announcement of his hostility toward the Union and its membership campaign and the

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<sup>21</sup> The Company quarrels (Br. 68-69) with the finding that Warren had asked Schrock about the Union, urging that Schrock broached this subject and hence the Board's finding that "Warren had unlawfully interrogated Schrock" cannot stand. The Board's finding, however, was that the conversation was unlawful (A. 299), and the Company ignores Warren's speculation concerning the action which Hussey was going to take against the union adherents.

<sup>22</sup> During this period, the Company sent out another letter to its employees accusing Ted Nolan, the International Representative of the IUE, of being a desperate man lying to the employees about the Union. The Company's letter strongly implied that Nolan would use the union dues for his own advantage.

discharge of Newby, the conduct of high management officials in relation to employees set out above carries "at least the aroma of coercion . . . and constitutes an unfair labor practice under Section 8(a)(1)." *Joy Silk Mills v. N.L.R.B.*, 87 U.S. App. D.C. 360, 185 F.2d 732, 740 (1950), cert. denied, 341 U.S. 914.

### III. THE REMEDIES ORDERED BY THE BOARD WERE PROPER AND WITHIN ITS DISCRETION

The Board ordered the Company to cease and desist from its unfair labor practices. Affirmatively, it ordered the Company to offer Willis Newby reinstatement and to make him whole for any loss of earnings he may have suffered. In addition, the Board ordered the Company to bargain with the Union. These were conventional remedies, following usual Board practice for the type of violations found. The Union's contention that the Board should order compensatory relief for employees to make up for gains they would have achieved earlier, but for the Company's refusal to bargain and reach an agreement, is clearly an appeal to the Board to exercise its remedial discretion. The Board's decision not to depart from its usual practice and order such relief in this case is well within the area reserved for agency discretion. As this Court stated in *Amalgamated Clothing Workers (Hamburg Shirt Corp.) v. N.L.R.B.*, 125 U.S. App. D.C. 275, 281, 371 F.2d 740, 746 (1966):

The Board's power to fashion remedies places a premium upon agency expertise and experience, and the broad discretion involved is for the agency and not the court to exercise. We cannot insist that the traditional relief provided here will be so ineffective to enforce the policies of the Act as to be insufficient as a matter of law.

We submit that when the Board declines to afford a remedy other than what it traditionally grants, the refusal constitutes a determination that the

facts of the particular case do not warrant it, and no further explication is required. But see *United Packinghouse Workers v. N.L.R.B.*, U. S. App. D.C. , n. 7, F.2d (Nos. 21627 and 21825, February 7, 1969, 70 LRRM 2489, 2491).

### CONCLUSION

For the foregoing reasons, we respectfully submit that the petitions for review should be denied and that a decree should issue enforcing the Board's order in full.

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National Labor Relations Board.

March 1969.

21. Jme 5-7  
5-9-69  
(3)

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UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 22,181

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE  
WORKERS, AFL-CIO, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent,  
and  
LIBERTY COACH COMPANY, INC., Intervenor.

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No. 22,394

LIBERTY COACH COMPANY, INC., Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent,  
and  
INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE  
WORKERS, AFL-CIO, Intervenor

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On Petition To Review an Order of the  
National Labor Relations Board

United States Court of Appeals  
for the District of Columbia Circuit

REPLY BRIEF

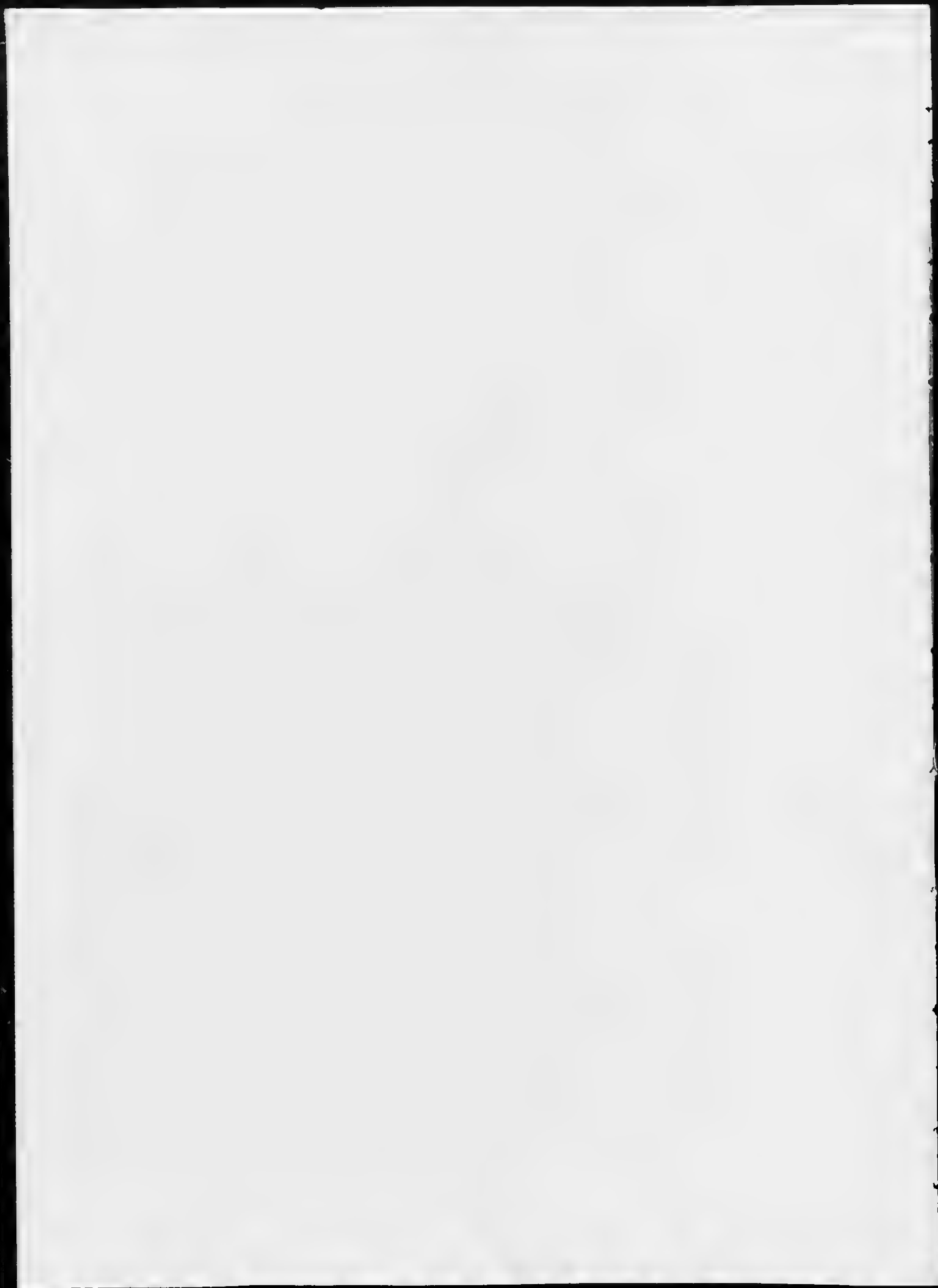
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(i)

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# **UNITED STATES COURT OF APPEALS**

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**On Petition To Review an Order of the  
National Labor Relations Board**

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## **REPLY BRIEF**

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### **I. THE BOARD'S FAILURE TO REVIEW THE EVIDENCE SUBMITTED TO THE REGIONAL DIRECTOR OR TO GRANT A HEARING WAS CLEAR PREJUDICIAL ERROR**

As the National Labor Relations Board recognizes, a principal contention of the Company is that the Board committed reversible error by failing to review the various evidentiary materials which the Company had submitted to the Regional Director in the representation proceeding. If it had done so, the need for a hearing would

have been even more apparent than it already was. At about the time that the Company filed its initial brief in this case, the United States Court of Appeals for the Fifth Circuit issued a decision dealing with this very issue. *Southwestern Portland Cement Co. v. NLRB*, \_\_\_ F.2d \_\_\_, 59 CCH LC ¶13,273 (5th Cir., No. 25,791, February 10, 1969). In that case, the employer had submitted affidavits and exhibits in support of its objections to the Regional Director, but these affidavits and exhibits were not forwarded by the Regional Director to the Board when the employer's Exceptions were filed. The Court concluded that the documents should have been forwarded to the Board as part of the record, stating that "the affidavits in question are certainly 'other documents submitted by the parties to the Regional Director,' " within the meaning of Section 102.68 of the Board's Rules and Regulations. The Court cited the Third Circuit's decision in *NLRB v. Botany Worsted Mills*, 133 F.2d 876 (3rd Cir. 1943), as holding that in both representation and complaint proceedings before the Board, all pleadings, rulings, documents, etc., constitute the record before the Board.

Although the Court in *Southwestern Portland Cement* ultimately found that the error committed by the Board was not prejudicial in the circumstances present there, the reason for that conclusion by the Court demonstrates the validity of the Company's contention here. For in that case the contents of the affidavits and exhibits were set forth fully in the employer's Exceptions and the Court reasoned that the actual documents themselves would not have given the Board any additional information. For that reason, and for that reason alone, the Court decided that the election did not have to be set aside on the ground that the affidavits were not before the Board.

In the instant case, however, the Company's Exceptions incorporated the evidentiary materials submitted to the Regional

Director by reference and asserted that they would, if reviewed by the Board, demonstrate the validity of the Company's contentions. No specific paraphrasing or analysis of that evidence was included in the Exceptions, since that was unnecessary *if* the materials were to be reviewed. Thus, unlike the situation in *Southwestern Portland Cement*, the failure to have these documents forwarded to the Board was *prejudicial* error, for only by such review could the Board consider the extent of the Company's Exceptions. If the Board feels that such a procedure would unduly hamper its operations, it can amend its Rules specifically to prohibit reliance on documents which under the present Rules are part of the record. But until the Rules are so amended, parties should not be penalized for doing what is perfectly proper under existing procedures.<sup>1</sup>

The Board suggests that the requested documents are of little importance because, it says, they are used only three times to support contentions contrary to the Regional Director's factual findings and less than 200 pages and 10% of the materials are referred to in the Company's brief.<sup>2</sup> Aside from the fact that such quantitative evaluations are meaningless when considering a party's fundamental right to be heard, the Board itself thus acknowledges that at least a portion of the materials was relevant to the issues before the Board and that factual issues were presented therein.

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<sup>1</sup>In recent months the Board appears to be ordering hearings in an increasing number of cases involving objections and challenges, apparently as a result of frequent court reversals due to the failure to hold a hearing. This would seem to put into question the Board's argument that the number of such cases makes it difficult to give a full review to each.

<sup>2</sup>A great deal of the materials were not referred to in the interest of economy and time and because they were either cumulative or dealt with the Union's objections to the election which are not at issue here. The Board's statement (B. Br. 13) that none of the exhibits were referred to in the Company's brief is in error. See Company's initial brief, pp. 4, 33-4.

In asserting that there are only three instances in which the materials are used to support contentions at odds with the Regional Director's factual findings, the Board overlooks the fact that the Regional Director's Decision contained mostly unsupported ultimate conclusions and few, if any, factual findings on the Company's objections to the election. Nevertheless, the Company's evidence was used to support a number of factual contentions which were counter to the Regional Director's underlying premises, if not his expressed factual findings. This included evidence to show that the slowdown was caused by persons who were apparently acting on behalf of the Union; that the bonus formula was too complicated for employees to understand or for them to be given an effective rebuttal to the Union's charges within the time allowed; that rumors affecting the election were circulating throughout the plant; and that members of the organizing committee had not authorized their names to be placed on the Union literature. The evidence presented did not have to prove the case—it merely had to set forth enough facts to demonstrate that a substantial issue did exist which required a hearing for resolution. This it did. And it does not matter that only three or four such issues are shown—one alone would suffice.

Moreover, the Regional Director did make a specific factual finding that the garage employees were not managerial personnel. The Company excepted to this finding in the Exceptions and pointed out that the representation case transcript contained much evidence to support its contention that they did have such status and that the Regional Director had erred. Thus a clear factual issue was presented by the Exceptions and evidence; the evidence should have been reviewed and a hearing directed.

Further, the materials are replete with evidence demonstrating the complete lack of a community of interest between the garage employees and the others. Since the Regional Director found

accordingly, no factual question had to be raised in the Company's Exceptions in this respect. Nevertheless, the Board stated that, "the Acting Regional Director found that the two employees whose ballots were challenged, Timmons and Kleinknight, have work and interests which are separate and distinct from those of the production and maintenance employees, and should be excluded from the unit found appropriate. We do not agree." (J.A. 216). The question of community of interest is of importance as to both the appropriateness of the unit and the intent of the parties. Certainly, the Board had to at least review the evidence before "disagreeing" with the Regional Director, as a clear factual matter was presented.

The issues of this case were not presented for the first time to this Court as the Board asserts on page 11 of its brief. Rather the issues were clearly and repeatedly presented to the Board in a number of documents, including the Company's Exceptions to the Regional Director's Report. They were shown in the Objections themselves, in the Company's Motion for Reconsideration, in the brief attached to that Motion,<sup>3</sup> in the Company's additional Exceptions to the Regional Director's second Report (where the Company for the first time had to contest an unfavorable decision of the Regional Director), in the pleadings and motions before the Trial Examiner in the unfair labor practice case, in the brief to the Trial Examiner and in the Exceptions to his Decision. Thus the existence of factual issues had been demonstrated to the Board and it cannot now claim that it is surprised by the Company's contentions.

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<sup>3</sup>The Board errs when it states on page 9, n. 3, of its brief that it accepted the Company's brief. The Board's February 8, 1967, letter to Counsel for the Company rejecting the brief, stated: "Accordingly, your brief in support of the exceptions must be rejected. . . ." The Company later attached the brief as an exhibit to its Motion for Reconsideration and only in that form was the brief accepted by the Board. At the time of its initial Decision, however, the Board did not have the brief before it.

II. THE BOARD'S FAILURE TO ADOPT THE REGIONAL  
DIRECTOR'S FINDINGS ON THE COMPANY'S CHAL-  
LENGES TO THE ELECTION WAS PREJUDICIAL ERROR

Contrary to the Board's suggestion on page 4 of its brief, the Regional Director did not recommend exclusion from the unit of the two challenged employees merely on the grounds that they were garage employees. Rather, as he clearly presented on page 14 of his Decision, the Regional Director recommended their exclusion from the unit because of their total lack of any community of interest with unit employees. Thus the Board's statement on page 29 of its brief that garage mechanics have previously been included in a production and maintenance unit is inapposite, as it begs the question of the lack of community of interest between the employees which was clearly shown here.

The factors cited by the Board to show that there was some community of interest between the employees so as to make the unit not inappropriate are so *de minimis* when compared to the factors cited by the Regional Director demonstrating separateness that they serve to prove the correctness of the Regional Director's Decision. The Board could only state that the employees receive the same vacation, holiday and insurance benefits, benefits which even employees who were specifically excluded from the unit share. On the other hand the factors cited by the Regional Director and shown in the Company's evidence demonstrate the complete separateness and lack of contact and interests between the garage and production employees. The Board's statement that the pay of the plant maintenance man and the garage employees is comparable completely overlooks the fact that the garage employees earn a large amount of overtime and that their actual pay is considerably higher than other employees (J.A. 318, 331-332, 335). Moreover, the citation of one short substitution in 1965 is the exception which demonstrates the lack of interchange between employees.

The Regional Director had decided that there was such a lack of community of interest between the garage employees and the production and maintenance employees that the two could not possibly be included in the same unit. Nevertheless, the Board asserts that garage mechanics are more clearly encompassed by a "production and maintenance" unit than are the local truckdrivers who were included in the unit. (B.Br. 27).<sup>4</sup> The Board, however, fails to take account of the fact that the local truckdrivers work at the Syracuse, Indiana, production facilities and are directly involved in the production process, while the garage employees are separately located and work almost exclusively on the distribution and sales aspects of the business in connection with the haulaway drivers who were excluded from the unit. Contrary to the Board's assertion on page 28 of its brief that the Company does not contend that the exclusion of haulaway drivers restricts the unit, such arguments were in fact made on page 30 and 38 of the Company's initial brief. The functional differences and geographic separation of the employees were clearly represented in the stipulation. Yet the Board ignores the precise geographic limits contained in the unit definition and asserts that the garage, which is not in Syracuse, "is clearly within the Company's Syracuse 'establishment.'" The most that can be said is that the unit definition is ambiguous and that a hearing is required to resolve that ambiguity.

The Board's attempt to distinguish the Supreme Court's definition of the word "establishment" in *Phillips v. Walling*, 325 U.S. 490 (1945) on the ground that that case was dealing with the Fair Labor Standards Act is to make a distinction without a difference. The fact is that the word has an accepted definition, not only in this context, but, as the Supreme Court stated, also in business, government and law. That definition cannot be completely ignored

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<sup>4</sup>"B.Br." refers to the Board's brief.

when making a determination as to the meaning of the word used by the parties. Moreover, the dictionary definition of the word "plant" shows that it has a more expansive meaning than the word "establishment". Thus, Webster's *New International Dictionary*, 2nd Ed. (1939), at 1881, defines "plant" as including "real estate and all else that represents capital invested in the means of carrying on a business" and as "a factory, workshop or apparatus complete, for the manufacture of a particular product. . . ." Since the garage was separate, both geographically and functionally, from the production facilities in Syracuse, it could not have been included as part of the Company's Syracuse "establishment".

The Board states that the petition and the stipulation are in effect a single instrument. Yet it cites no authority for this unique proposition. If the intent of the parties is to be determined without the use of extrinsic evidence then that intent must be gleaned from the four corners of the stipulation only. The Board cannot look at some extrinsic evidence while at the same time refusing to look at other evidence which would support the opposite result.

The Board apparently concedes that the garage employees are managerial employees but contends that this does not make their inclusion in the unit inherently inappropriate. (B.Br. 30). As pointed out in the Company's initial brief, however, the Board has invariably excluded employees from units as managerial merely on the basis that they can order their own parts and pledge the Company's credit. This in itself, according to the Board's decisions, identifies them with interests opposed to those of other employees in the unit and makes their inclusion in the unit inherently inappropriate. Moreover, the substantial testimony about the garage employees' independence in running the garage shows their complete lack of identity and interests with the other workers. At the very least, these are factual questions which could only be resolved pursuant to a review of all the evidence and the holding of a hearing.

### III. THE MARKED BALLOTS WERE SO MARKED DELIBERATELY AND HENCE SHOULD HAVE BEEN VOIDED

The circumstances surrounding the markings on Timmons' envelope and Kleinknight's ballot show that both were apparently marked intentionally so that they could be identified and their votes known. The normal procedure for counting challenged ballots would be to remove the stubs with the names on them and to shuffle the unmarked envelopes before opening them so that their owners could not be ascertained. Here, however, Timmons had marked his envelope in such a way that his ballot could not be removed without all knowing it was his. Clearly he intended that the observers would know how he voted just as if he had marked the ballot itself. The Board agent tried to remedy the situation by removing the ballots from the envelopes and then shuffling them. But everyone present knew that Timmons' ballot was whole while Kleinknight's had had its corners torn off before it was sealed in the envelope—so no amount of shuffling could have hidden the identity of the voters. The Company submits that the highly unusual combination of Timmons' marked envelope and Kleinknight's torn ballot demonstrates that both employees had intentionally and deliberately sought to prove how they had voted in the election.

### IV. THE BOARD'S FAILURE EVEN TO ORDER A HEARING ON THE COMPANY'S OBJECTIONS WAS REVERSIBLE ERROR

Contrary to the Board's assertion on page 20 of its brief, the Company's contention with respect to the misrepresentation about the bonus was not that the Union had merely "implied" that the Company was manipulating the bonus by pointing out that the bonus had risen in the weeks immediately following the election petition. Rather, the Company has asserted that the Union openly and unambiguously falsely accused the Company of manipulation and buying

votes and cheating on the bonus. In the International Representative's open letter dated October 21, 1966, the Union stated that, "His [Ted Auer's] manipulation of the production bonus, since the Union filed the Petition for an election, is tantamount to 'buying votes against the Union' and this action, also, could well be an unfair labor practice charge." (J.A. 198). And in a circular dated October 26, 1966, just two days before the election, the Union stated that, "... we are confident *that none of you are fooled* about the *EXTRA* bonus *now* being paid." (J.A. 204). Clearly, the Union was intent on presenting the Company as using the bonus system to buy votes. And in a circular dated October 27, 1966, the day before the election, the Union, after comparing wages and hours in 1964 and 1966, mentioned that there had been an increase in hourly wages and then stated, "The Company sure got that 'increase' back ... and then some. ...". Thus the Union was clearly indicating to the employees that prior to the filing of the petition the Company had been holding back on the bonus payments and had not been giving the employees the full amount due them.

Whether or not the full bonus was being paid was not a matter easily evaluated by employees. As the evidence presented to the Regional Director showed, the bonus was not computed on a formula directly related to production, but was based on a complicated computation involving the size and type of trailer being made, the number of employees working at the time, the number of overtime hours put in and other factors. (Representation Case Transcript, 559-591). In fact, it took the Board's investigating attorney several days to look into the bonus question and to decide that there had in fact been no manipulation by the Company.

Moreover, it was not until the eve of the election that the Union made any statements about the Company holding back or cheating on the bonus (as opposed to paying an extra bonus during the pre-

election period). The Company thus had no time at all to respond to this very material misrepresentation.

The Company demonstrated that a slowdown had occurred and asserted that it was caused by employees acting on behalf of the Union. Certainly such a slowdown, either alone or in combination with the Union's assertions about cheating and manipulation of the bonus, interfered with the compensation paid to employees and made it appear that the Company was the responsible party. Such actions would clearly interfere with the exercise of unfettered choice at an election.

Of course, only employees working on the assembly line could directly cause a slowdown. The testimony of some employees indicated that the Union was behind the movement. At the very least a clear factual issue as to the responsibility for the slowdown was presented by the Exceptions and the testimony presented to the Regional Director and a hearing to resolve the question should have been ordered. The Employer's access to information on such issues was, of necessity, limited. Only with the benefit of a hearing and the rights of subpoena and cross examination could the true facts have been learned.

The Board asserts, on pages 23-4 of the brief, that while cards secured through false claims of majority status may be invalidated, such misrepresentations are not enough to cause an election to be set aside. No rationale is expressed for this difference in treatment, however. The same influences would appear to be present whether the employee signs a card or votes "yes" in the election. The Company submits that the two situations should be treated similarly, for in either the natural desire to be with the majority could cause employees to support the Union where they otherwise might not have.

Although it was not necessary to its decision in the case, the NLRB in *DIT-MCO, Inc.*, 163 NLRB No. 147 (1967), announced that it would no longer follow the rule of *Lobue Bros.*, 109 NLRB 1182 (1954), which provided that a waiver of initiation fees conditioned on the results of the election would be deemed to have a substantial impact on the election. The Board's new policy, however, did nothing to upset the validity of the First Circuit's ruling in *NLRB v. Gorbea, Perez & Morell, S. en C.*, 328 F.2d 679 (1st Cir. 1964), that waivers conditioned on employees having to join the union *before* the election would require the election to be set aside. While an employee might join a union in order to obtain the waiver and still vote "No", the fact that he has to become a member prior to voting can have a substantial effect on the way that he votes in the polling booth. As the Court in *Gorbea* noted, if such inducement was not the real motivation behind the offer, the union's aims could be accomplished by keeping the offer open for a period of time after the election.

Of course, the Board's decision in *DIT-MCO* can have no effect on the First Circuit's decision in *Gorbea* or the Sixth Circuit's decision in *NLRB v. Gilmore Industries, Inc.*, 341 F.2d 240 (6th Cir. 1965), which followed the *Lobue Bros.* rule. As the Court in *Gilmore* noted, the economic inducement provided by a waiver conditioned on the Union winning the election is material and impedes the making of a reasoned choice. Just as an employer's granting of benefits to employees during an election campaign will cause an election to be set aside (See *J. C. Penney Co., Inc. v. NLRB*, 384 F.2d 479 (10th Cir., 1967)), so too should a union's granting of benefits within its power cause the same result. Certainly, by making the offer in the final days of the campaign, the Union has demonstrated that it expected it to have a significant effect on the election.

The Union's waiver in this case, however, was not just conditioned on signing up before the election and on the Union winning

the election. The offers were worded in such a way that an employee could easily have interpreted them as requiring him to vote "Yes" in order to obtain the waiver. Employees can not be expected to give the wording of campaign literature close scrutiny and thus "ambiguities must be resolved against the union. . . ." *NLRB v. Gorbea, Perez & Morell, S.en C., supra* at 682. Clearly a waiver conditioned on a vote for the Union is coercive and directly interferes with the employees' exercise of free choice.

The Union's October 21st circular was issued over the names of members of the Union's "organizing committee." All of the members of that "committee" who testified during the investigation of the objections stated that they had not authorized the use of their names on this literature and were upset at being associated with it. Not only did the use of their names make the Union's charges difficult to rebut, but it also gave to the literature an apparent authority and validity which it in fact did not have. Thus the literature had an unreasonable influence on the election and the use of these employees' names was a material misrepresentation of their attitudes and beliefs which affected the election.

#### V. THE BOARD CLEARLY ERRED IN CONCLUDING THAT NEWBY'S DISCHARGE WAS UNLAWFUL

The Board seeks to show that the Company was hostile toward the Union by quoting portions of a letter written by President Hussey in August of 1967. The Company submits that the language used by Mr. Hussey and quoted by the Board was so mild as to demonstrate that no such hostility actually existed. Surely a company's assertion that it will exercise its legal rights and seek judicial review of the union's certification does not show the type of anti-union motivation which would cause it to discharge an employee for his union activities. Yet this is the only evidence of such motivation which the Board attempts to set forth.

The record shows that there was a clear rule at the Company which required employees to call in if they were to be absent or late and that the rule was uniformly enforced. Newby was not given the benefit of a first warning because his breach of the rules occurred on the day of resumption of work after the fire—when almost all other employees were accounted for and when emotions on the part of those who had worked day and night to get the plant back into production were understandably running high. Contrary to the Board's assertion (B.Br. 33, n. 19), the Board did overturn the Trial Examiner's credibility determinations, as President Hussey had testified that Newby's failure to report was the sole reason for his discharge and the Trial Examiner so found.

#### VI. THE BOARD'S CHOICE AS TO THE REMEDY SHOULD NOT BE SET ASIDE

The NLRB has discretion to fashion remedies to effectuate the policies of the National Labor Relations Act. Only where the Board abuses that discretion may Courts interfere with the remedies imposed by it. Where the Board provides an adequate remedy for an unfair labor practice and declines to impose additional remedies requested by one of the parties, its decision is within the area of its permissible discretion and should be upheld. As this Court stated in *United Steelworkers of America v. NLRB*, 126 U.S. App. D.C. 215, 376 F.2d 770, 773, *cert. den.*, 389 U.S. 932 (1967):

The Supreme Court has recently re-emphasized the established rule that courts must give deference to the choice of remedy made by the administrative agency, unless it reflect so gross an abuse of power as to be arbitrary. See *Consolo v. FMC*, *Supra* [386 U.S. 607, (1966)]; *FCC v. WOKO, Inc.*, 329 U.S. 223, 227-228, 67 S.Ct. 213, 91 L.Ed. 204 (1946).

And as the Supreme Court stated in *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 194 (1941):

Because the relation of remedy to policy is peculiarly a matter for administrative competence, courts must not enter the allowable area of the Board's discretion and must guard against the danger of sliding unconsciously from the narrow confines of law into the more spacious domain of policy.

See also, *NLRB v. Gullett Gin Co.*, 340 U.S. 361 (1950).

As the Trial Examiner noted, the Company's refusal to bargain here was merely a technical violation of the Act designed to test the validity of the Union's certification. This was the only means by which the Company could obtain judicial review of the Board's decision in the representation case. *Boire v. Greyhound Corp.*, 376 U.S. 473 (1964); *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146 (1941). The Company did not exhibit any general hostility to the Union or to the policies of the Act. Surely, the Company should not have severe and unusual remedies imposed upon it for pursuing its legal rights in a serious contest to the Board's rulings. Any delays which have occurred are inherent in the administrative process and any changes must be made by Congress—not the Courts. In dealing with a similar problem in *Retail, Wholesale, and Department Store Union v. NLRB*, \_\_\_ U.S.App. D.C. \_\_\_, 385 F.2d 301, 308 (1967), this Court stated that "the present case, however, does not serve as an appropriate vehicle for creation of unprecedented remedies." That reasoning should apply equally here.

The remedies requested by the Union would require speculation as to benefits which might have been obtained if bargaining had not been delayed by legal processes. In effect, the Union would have the Board write the contract for the parties. The Board has very correctly refused to get involved in such speculation and in collec-

tive bargaining negotiations. The Union has made no showing that bargaining would have resulted in any increased benefits. At the very least it should be required to make such a showing before additional time-consuming hearings are required on the issue.

### CONCLUSION

For the foregoing reasons, it is respectfully submitted that, in addition to the relief requested in the Company's initial brief, the Union's petition for review should be denied.

Respectfully submitted,

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SUPPLEMENTAL APPENDIX

EXCERPTS FROM TRANSCRIPT OF TESTIMONY, AS AMENDED, IN CASE No. 25-CA-2921:

[TED NOLAN]

CROSS EXAMINATION

136

Q. (By Mr. Shea) Mr. Nolan, you are the author actually of these handbills that are passed out aren't you?

A. Not entirely.

Q. Who else is?

A. An associate of mine.

137 Q. What's his name?

A. George Rue.

\* \* \*

[AMOS M. SCHROCK]

149 Q. But you went didn't you?

A. At 2:00 o'clock I went.

Q. And then he didn't say in any way he was stopping you in his opinion?

A. True.

\* \* \*

[LONNIE SPENCER]

161

CROSS EXAMINATION

Q. (By Mr. Shea) Lonnie, you said you tried to call in but Counsel kind of cut you off?

162 MR. LANKER: I'm going to object to that. He didn't say that at all.

TRIAL EXAMINER: What is your testimony? Have you

ever called in?

THE WITNESS: No, sir, never made a phone call.

TRIAL EXAMINER: Did you ever try to?

163 A. Yes, I usually try to call the boy driving and I ride with him and he would always go by and tell Ralph.

Q. In other words, you call in so that the fellow would know that your not coming in and also so your employer will know your not coming in?

A. That's right. He always knows.

\*\*\*

[EDWARD HUSSEY]

179 A. Oh, yes, as soon as we got the mill back in operation we rewired the mill on Thursday and got in new power and got it all swept out. In the mean time we were cleaning out all the debris that was all cleaned out on Thursday and so we put a new roof on. Basically we got that done, most of it done Thursday night.

180 We just took tar paper and threw it over the top of the building to hold it down and there were a large number of people working up there getting it done and then we, as I say, we had the power back in the mill by Thursday night.

\*\*\*

188

REDIRECT EXAMINATION

Q. (By Mr. Shea) Mr. Hussey, you testified on direct that this is the only time you had ever gone down and taken the cards,

personally requested that cards be pulled?

A. Yes.

Q. Did you mean, in that affidavit, that you personally and mechanically took those cards out?

A. No, I ordered them. Charlie Warren had pulled the cards.

Q. And you've never done that before; is that right?

A. Right.

MR. SHEA: That is all.

\* \* \*

[CHARLES HENSON WARREN]

203 Q. (By Mr. Shea) Mr. Warren, do you know whether or not Mr. Newby had called in to Liberty to the switchboard operator and you were returning his call when you called him?

A. This could be.

Q. On that day, are you sure of times at all?

A. On that day it was pretty busy and everybody was coming to me for this and that and we were out of cabinets and we were running coaches down the line without cabinets and we were just having one big time of it getting anything out.

Q. Did you have temporary cabinets out there or temporary cabinet facilities?

A. Temporary, we didn't have any really. Some of it, yes, we were working on the facilities evenly.

Q. In other words, you were still constructing cabinet

facilities as you were running?

A. Yes.

Q. Were you going from one building to the other?

A. Right.

Q. But your call to Mr. Newby could be in response to Mr. Newby's call in the company?

A. This could be.

Q. Do you recall whether it was or not? You don't recall that?

A. No. No, I don't.

\* \* \*

[REPRINT OF JOINT APPENDIX PAGE 243]

Challenged ballot of Max Kleinknight

UNITED STATES OF AMERICA	
National Labor Relations Board	
<b>OFFICIAL SECRET BALLOT</b>	
FOR CERTAIN EMPLOYEES OF LIBERTY COACH COMPANY, INC.	
Do you wish to be represented for purposes of collective bargaining by -	
INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO ?	
MARK AN "X" IN THE SQUARE OF YOUR CHOICE	
YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

DO NOT SIGN THIS BALLOT. Fold and drop in ballot box.  
If you spoil this ballot return it to the Board Agent for a new one.

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

---

STIPULATION FOR CERTIFICATION UPON CONSENT ELECTION

Pursuant to a Petition duly filed under Section 9 of the National Labor Relations Act, as amended, and subject to the approval of the Regional Director for the National Labor Relations Board (herein called the Regional Director), the undersigned parties hereby AGREE AS FOLLOWS:

1. **SECRET BALLOT.**—An election by secret ballot shall be held under the supervision of the said Regional Director, among the employees of the undersigned Employer in the unit defined below, at the indicated time and place, to determine whether or not such employees desire to be represented for the purpose of collective bargaining by (one of) the undersigned labor organization(s). Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the applicable procedures and policies of the Board.

2. **ELIGIBLE VOTERS.**—The eligible voters shall be those employees included within the Unit described below, who were employed during the payroll period indicated below, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, and employees in the military services of the United States who appear in person at the polls, also eligible are employees engaged in an economic strike which commenced less than twelve (12) months before the election date and who retained their status as such during the eligibility period and their replacements, but excluding any employees who have since quit or been discharged for cause and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated prior to the date of the election, and employees engaged in an economic strike which commenced more than twelve (12) months prior to the date of the election and who have been permanently replaced. At a date fixed by the Regional Director, the parties, as requested, will furnish to the Regional Director, an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.

3. **NOTICES OF ELECTION.**—The Regional Director shall prepare a Notice of Election and supply copies to the parties describing the manner and conduct of the election to be held and incorporating therein a sample ballot. The parties, upon the request of and at a time designated by the Regional Director, will post such Notice of Election at conspicuous and usual posting places easily accessible to the eligible voters.

4. **OBSERVERS.**—Each party hereto will be allowed to station an equal number of authorized observers, selected from among the nonsupervisory employees of the Employer, at the polling places during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally.

5. **TALLY OF BALLOTS.**—As soon after the election as feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or agents. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to each of the parties.

6. **POST-ELECTION AND RUN-OFF PROCEDURE.**—All procedure subsequent to the conclusion of counting ballots shall be in conformity with the Board's Rules and Regulations.

7. **RECORD.**—The record in this case shall be governed by the appropriate provisions of the Board's Rules and Regulations and shall include this stipulation. Hearing and notice thereof, Direction of Election, and the making of Findings of Fact and Conclusions of Law by the Board prior to the election are hereby expressly waived.

8. COMMERCE.—The Employer is engaged in commerce within the meaning of Section 2(6) of the National Labor Relations Act, and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c). *(Insert commerce facts.)* The Employer, Liberty Coach Company, Inc., an Indiana corporation, with principal offices and place of business located at Syracuse, Indiana, is engaged in the manufacture, sale and distribution of mobile homes. During the last twelve (12) months, a representative period, the Employer purchased and received goods valued in excess of \$50,000.00 directly from sources located outside the State of Indiana.

9. WORDING ON THE BALLOT.—Where only one labor organization is signatory to this agreement, the name of the organization shall appear on the ballot and the choice shall be "Yes" or "No." In the event more than one labor organization is signatory to this agreement, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot, or if the occasion demands, from top to bottom. *(If more than one union is to appear on the ballot, any union may have its name removed from the ballot by the approval of the Regional Director of a timely request, in writing, to that effect.)*

First.

Second.

Third.

10. PAYROLL PERIOD FOR ELIGIBILITY.— ENDING OCTOBER 2, 1966

11. DATE, HOURS, AND PLACE OF ELECTION.—

DATE: FRIDAY,  
OCTOBER 28, 1966.

HOURS: 1:00 p.m. to 2:30 p.m.

PLACE: STORAGE AREA NEAR TIME CLOCK IN MAIN BUILDING.

12. THE APPROPRIATE COLLECTIVE BARGAINING UNIT.—

All production and maintenance employees of the Employer at its Syracuse, Indiana establishment:

BUT EXCLUDING all office clerical employees, all mobile home haulaway truck drivers, guards, and all professional employees and supervisors as defined in the Act.

If Notice of Representation Hearing has been issued in this case, the approval of this stipulation by the Regional Director shall constitute withdrawal of the Notice of Representation Hearing heretofore issued.

LIBERTY COACH COMPANY, INC.

Syracuse, Indiana (Employer)

By E. W. Becktold (Address)  
E. W. Becktold, Sec.-Treas. (Date) Oct 7, 1966

Recommended:

Stanley J. Durnell (Date)

Date approved: 10/11/66  
George M. Smith Regional Director,  
National Labor Relations Board.

INTERNATIONAL UNION OF ELECTRICAL,  
RADIO AND MACHINE WORKERS  
AFL-CIO

702 West Jefferson Street, (Address)  
Fort Wayne, Indiana

By Robert D. Smith (Address)  
(Name and Title) Int'l Repr. (Date) 10-6-66

(Name of other Organization)

(Address)

By \_\_\_\_\_ (Name and Title), (Date)  
Case No. 25-RC-2352